The Theatre of Justice

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The Theatre of Justice

Aspects of Performance in Greco-Roman Oratory and Rhetoric

Edited by

Sophia Papaioannou
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Beatrice da Vela

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Athens, Dublin, Cyprus, Florence and London
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CHAPTER 1

Introduction

Sophia Papaioannou, Andreas Serafim and Beatrice da Vela

People have tended to think of performance in the context of the theatre, where a drama is enacted before an audience by a group of people (the actors) impersonating another group of people (the characters) in the presence of a third group (the audience). The majority of scholars within the domains of classics, classical rhetoric and ancient history, however, have begun to explore oratory as being intrinsically performanceful—a fact that the title of this volume, *The Theatre of Justice*, aims to highlight. There is a theatre in the law-court in the sense that an orator, like an actor, uses techniques of performance, seeking to engage and manipulate his audience to elicit a certain reaction from it. Oratorical and theatrical performances are three-cornered dialogues. In both, the triangulation, even if it is not explicit, is always there, since there are always three parties involved: a performer—whether actor or orator—talks about and, intermittently, to his opponent or co-actor before the audience, offering stimuli to the target audience and aiming to provoke a specific reaction.

The increasing scholarly interest in oratorical performance from the Classical to the Hellenistic eras is reflected in a wide range of studies within the domain of classical literary criticism. These studies, however, mostly focus on a relatively narrow understanding of performance as being connected with theatrical genres and/or as being synonymous with delivery, a notion that refers to gesticulation and vocal ploys. The work of Hall, for example, is particularly valuable in shedding light on these two dimensions of performance. Hall devotes the last chapter of her book, *The Theatrical Cast of Athens*, to a discussion of the links between drama and oratory, focusing her investigation on the construction of characters and on delivery.

Two volumes, one edited by Goldhill and Osborne, *Performance Culture and Athenian Democracy* (Cambridge 1999), and the other edited by Hall and Harrop, *Theorising Performance: Greek Drama, Cultural History and Critical Practice* (London 2010) provide invaluable insights into performance in classical literary theory in general. They do not, however, focus exclusively on and discuss in detail performance in Greek and Roman oratory. The volume of Goldhill and Osborne, for example, contains four chapters on aspects of oratorical performance, but its focus as a whole is on drama and ritual. Despite its suggestive title, the most relevant chapter to the topic of this volume is that of Easterling

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on references to acting in oratory.[1] In her chapter in Goldhill's and Osborne's volume, Easterling examines the association between oratory and theatre by offering a perceptive discussion of references to actors and acting in selected speeches of Aeschines (2, 3) and Demosthenes (18, 19). The chapters of Fisher-Lichte and Hall, in the volume edited by Hall and Harrop, are most useful in discussing the defining features of and influential theories about performance, but they do not examine any key aspects of performance in oratorical speeches.[2]

Another set of scholarly works revisit transmitted texts in order to reconstruct a view of the delivery techniques that may have been used. Boegehold, for example, discusses the use of gesticulation, facial expressions and vocal communication in his work entitled *When a Gesture was Expected* (Princeton 1999). Boegehold offers a useful overview of delivery techniques, examining selected passages from Archaic and Classical Greek literature, especially tragedy, comedy and epic poetry to philosophy, historiography and oratory, in order to discuss textual indicators of gestures, posturing and other bodily and facial movements. The fact that Boegehold examines only a selection of passages still offers scope for further research, inasmuch as he does not investigate speeches in both Greek and Roman oratory.

Performance in Latin oratory has also received considerable attention in classical scholarship. Fantham, for example, provides useful insights about how oratorical performance abides by the same rules of the theatrical performance; e.g. "Quintilian on Performance: Traditional and Personal Elements in 'Institutio' 11.3" (*Phoenix* 1982); "Orator and/et Actor", in Easterling and Hall, *Greek and Roman Actors: Aspects of an Ancient Profession* (Cambridge 2002). An oeuvre of other works explores features of the intersection between theatricality and gender/masculinity in oratorical performance; e.g. Gunderson, *Staging Masculinity: The Rhetoric of Performance in the Roman World* (Ann Arbor 2000); the chapter of Connolly, entitled "Virile tongues: Rhetoric and Masculinity", in the volume *A Companion to Roman Rhetoric* (New Jersey 2010) by Dominik and Hall. Other studies shed welcome light on delivery. Aldrete's *Gestures and Acclamations in Ancient Rome* (Baltimore and London 1999) and Hall's "Cicero and Quintilian on the oratorical use of hand gestures" (*CQ* 54, 2004) focus especially on the question of the gestures employed by Roman orators to accompany their speeches. Panayotakis' "Nonverbial behaviour on the Roman Stage", in

1 The other three chapters are: Hesk on the rhetoric of deception (pp. 201–230); Ford on quoting Homeric verses in speeches (pp. 231–256); von Reden and Goldhill on manly courage in Plato's *Laches* and oratorical speeches (pp. 257–289).

2 Fischer-Lichte (2010) 29–42; Hall (2010) 10–28.

Cairns, ed., *Body Language in the Greek and Roman Worlds* (Wales 2005), Graf's "Gestures and Conventions: The Gestures of Roman Actors and Orators", in Bremmer and Roodenburg, *A Cultural History of Gesture* (Cambridge 1991) and Dodwell's *Anglo-Saxon Gestures and the Roman Stage* (Cambridge 2000) are important studies on the relationship between oratorical and theatrical gesticulation. Corbeill, meanwhile, has examined the cultural politics of gesture in Rome, both in oratory and beyond, in *Nature Embodied: Gestures in Ancient Rome* (Princeton 2004).

Only a few works in contemporary scholarship discuss the performance elements of speeches from the perspective of the whole context of a speech. Three chapters of the recently published volume of Kremmydas and Tempest, *Hellenistic Oratory: Continuity and Change* (Oxford 2013),—specifically Hall's on rhetorical actors and vocalism; Rubinstein's on oral performance and written submission; and Chaniotis' on vivid imagery and emotions—offer stimulating starting points on how to explore performance in Hellenistic oratory.

In the present volume, however, it is hoped that a more ambitious and large-scale project, with 16 chapters examining oratory and rhetoric, and investigating a much wider range of sources (i.e. not simply Attic or Hellenistic oratory but also various other Greek and Roman oratorical contexts), will enhance our knowledge and understanding of ancient oratory in/as performance. This volume sets out to make two interlocking claims that have the potential to affect the way classical scholarship thinks of and discusses performance in the oratorical speeches that have come down to us in textual form. The first claim is that the transmitted texts allow glimpses into the performative dimension of speeches, whether or not these connect with practice in the theatre. The second is that performance encompasses the possibility of more subtle communication between the speaker and the audience than mere delivery. This volume pays attention to the ways in which the audience experiences the speech and its rhetorical strategies. These ways explicate the notion of oratorical performance in the same way that Performance Studies treat texts, visual arts or anything else.[3] As Schechner, the Father of Performance Studies, puts it, "texts are regarded as practices, events, and behaviours, not as 'objects' or 'things'. Performance Studies enquires about the 'behaviour' of, for example, a painting: the ways it interacts with those who view it, thus evoking different reactions and meanings".[4] The aim of the volume is to shed light on what rhetorical strategies would have done or have aimed to do in the audience, provoking its reaction, harnessing its emotions and thus, affecting its judgement and/or voting behaviour.

3 Serafim (2017).

4 Schechner (2002) x.

The 16 studies in this collection consider five broad categories of performance. The first, entitled "Speakers-Audience", examines a diversity of techniques (such as allusions to the comic stage and addresses to the audience) that aim to forge rapport with the audience, provoking its verbal or non-verbal reaction, and the ways in which the speakers responded impromptu to these reactions or to the comments that their opponents made.

The second category of performance, "Ēthopoiia", addresses the features and purposes of the portrayal and presentation of characters. Modern scholars tend to use *ēthopoiia* in two senses: for Usher, the emphasis is firmly on *ēthopoiia* as moral character. For Carey, *ēthopoiia* designates the depiction of dramatic characters.[5] This volume draws on both of these approaches: *ēthopoiia* describes the process of portraying the moral character of the speaker and his opponent, regardless of whether the quality of their character is good or bad, and whether the portrayal is commensurate with the real life character or is dramatic. The depiction of character has the potential to sustain relations between the litigants and the audience by creating a persona for the hearers and viewers that may be either appealing or unappealing according to the speaker's needs, and that invites verbal or non-verbal responses that might affect the audience's judgement and voting behaviour. The potential of *ēthopoiia* to elicit an audience response underlines its performance value in the terms understood within Performance Studies, and makes it worth closer examination.

The third category of performance, "*Hypocrisis*-Delivery-*Actio*", is about gesticulation, facial expression and vocal ploys, as well as information about the staging of the speech—in other words everything that has to do with senses, sight and hearing. The fourth category, entitled "Emotions", aims to revisit from a performative point of view the use of emotions in Greco-Roman oratory. Although emotions are an acknowledged and frequently discussed feature of oratorical speeches, there is a gap in the scholarship in respect to understanding the use of emotions in a performative sense.

The fifth, and last category, of performance that is examined in this volume seeks to shed light on the performative perspective of language and style in oratorical contexts. Revermann is right to note (with specific reference to theatre) that "playwrights, actors and everyone else involved in a performance successfully 'do things with words': spellbind, entertain, alienate, persuade, provoke, entice, unify (through horror and laughter), and, last but not least in the Greek context, win".[6] This, as argued, is also the function of perfor-

5 Usher (1965) 99, n. 2; Carey (1989) 10–11, 61–62.
6 Revermann (2006) 36.

mance in oratory: to do things with words in order to influence the audience.

The value of the present book lies in its holistic approach to oratorical performance. In contrast to narrower understandings of oratorical performance, this holistic approach has the potential to provide new insights into, and open up the terms of, the scholarly debate about the fundamental nature of law-court performance. To see the whole picture is to develop a better understanding of the objectives of public speaking, the mechanisms of persuasion and the extent to which performance determined the outcome of judicial and political contests. A full appreciation of the performative elements in the speeches is as important to a complete understanding of these speeches as is an appreciation of the particular arguments of the speakers in their historical context.

Given the breadth of issues investigated in this study, and the importance of exploring each closely, it is not possible also to break down the examination of performance into the three traditional oratorical contexts—forensic, epideictic and deliberative. It is hoped, however, that this inevitable omission does not detract from the overall value of the suggested holistic approach. In fact, this volume, in elucidating in detail performance in specific oratorical contexts, aims to establish a framework within which further work on the Greek and Roman orators will be undertaken.

Oratorical Performance in Five Parts

1 *Speakers—Audience*

In chapter 2, Ian Worthington considers the importance attached to performance in the courts and the Assembly, and, by extension, the abilities of speakers to perform in those arenas and how they responded, or might respond, to audience reaction. This chapter suggests that, in the forensic arena, performance went hand-in-hand with the memorised speech, with no room for individuality. In the Assembly, however, the audience dictated not only what a speaker said but also how he said it, and to score points over opponents a speaker needed to respond to audience reaction because the directions taken by a political debate could never be accurately predicted.

In chapter 3, Andreas Serafim explores the use and the performative dimension of addresses to the audience in selected public speeches of Demosthenes (18: *On the Crown*; 19: *On the False Embassy*; and 24: *Against Timocrates*), arguing that addresses to the audience are more than merely a matter of convention. The insertion of addresses reminds us that speeches were intended for oral delivery and that a fundamental aspect of law-court performance was the inter-

action between speaker and audience. When a speaker addressed the audience in an Athenian court, he had specific purposes to achieve: to engage the hearers/viewers, to create a certain disposition in them towards the litigants and to affect the verdict of the judges.

In chapter 4, Brenda Griffith-Williams examines how Isaios enhances the credibility of his speech *On the Estate of Philoctemon* by means of performative techniques and by appealing to the judges' recognition of stock characters and situations from the comic stage. The speaker of Isaios 6 denies his opponent's claim that the deceased Euktemon left two legitimate sons. Isaios enhances the credibility of his alternative story by exploiting its performative potential, using theatrical allusions and enabling the speaker to engage with the audience through various rhetorical devices and non-verbal techniques.

In chapter 5, Guy Westwood examines how individual Athenian orators went about mediating eminent historical figures in performance, and why they did so, and further explores why these (and related) techniques appear where they do, and why more ambitious manoeuvres towards full-scale impersonation (*eidōlopoeia*) are not attempted in the extant Attic oratorical corpus. He argues that the extent to which fourth-century Greek orators chose to perform the roles of great historical Athenians depended on their own assessments of their skills as performers, and on how far they could engage with the opportunities for connection with the civic past brought by the Lycurgan era. Conjuring historical figures creates a connection with audience members on various levels (i.e. surprising and thrilling them by the act of impersonation, and drawing persuasively on their understandings of the civic past).

In chapter 6, Catherine Steel examines the unpredictable elements of the Roman forensic environment and the challenges they posed for speakers, such as witness statements, character references and the response of the *corona*. Formal speech in the Roman Republic was framed by informal exchanges, which could undermine or strengthen a speaker's effectiveness. An orator who could not cross-examine witnesses effectively, handle audience interjections and respond rapidly and pointedly to an opponent's comments was at a serious disadvantage—however good his formal oratory. The surviving texts of Republican oratory generally edit this material out, but careful consideration of other evidence for public speech at Rome reveals the extent to which orators had to improvise and deal with the unexpected.

2 *Ēthopoiia*

The second part focuses on the portrayal of the litigants and examines the patterns (such as the use of images of stock characters) that are used to depict

the moral character and political persona of the litigants. In chapter 7, Christos Kremmydas examines the ways in which logical argument helped shape and promote the speakers' *ēthos* in Thucydidean Assembly speeches, arguing that both *ēthos* and *logos* contributed to the appeal of Assembly debates as verbal competitive performances (cf. Thuc. 3.38.4).

In chapter 8, Henriette van der Blom uses the case of Q. Caecilius Metellus' recall from his African command in 107 B.C. to discuss some of the parameters for public performance in Roman republican oratory. Close analysis of extant oratorical fragments from speeches delivered by Metellus in 107–106 B.C. shows that Metellus tackled the public challenge to his reputation and career by delivering well-prepared *contio* speeches, which utilised emotional techniques to set himself up as an unjustly recalled general and a defender of the senate against an irresponsible tribune of the plebs. His decision to take up the oratorical challenge where it had been issued demonstrates his recognition of the importance of public reputation for maintaining a political career and of the possibilities of contional rhetoric.

3 *Hypocrisis—Delivery—Actio*

In chapter 9, Kostas Apostolakis examines the performative potential of selected forensic entreaties, especially the defendants' practice of bringing forward children, friends and relatives in order to arouse the compassion of the judges. The discussion of these entreaties, in the light of contemporary social and moral values, and in connection with the intended and the actual impact on the audience, contributes to the reconstruction of certain important aspects of an Athenian trial. More specifically, pseudo-Lysias' *For Polystratus*, the earliest surviving forensic speech with a political dimension, and Aeschines' *On the False Embassy* offer a complementary picture of this particular type of forensic performance. On the other hand, Socrates' disparaging description and Demosthenes' allusions to Aeschines' excessive *hypocrisis* both allude to a contra distinction of truth and theatrical illusion with which these entreaties might be associated.

In chapter 10, Beatrice da Vela offers a new reading of Donatus' notes on performance, with particular attention to the *Commentary on Adelphoe*, which confirms the rhetorical nature of these portions of the *Commentary*, and also shows evident links between Quintilian's theorisation of performance (particularly book 11) and Donatus' notes on extra-textual features. The overall attention that Donatus dedicates to non-verbal communication is evidence of the role that oratorical *performance* had in Roman education, providing a link between drama and oratory: this chapter explores the way this perspective was incorporated into school teaching practices.

By examining the emphasis Pliny the Younger places on *actio/pronuntiatio* in his letters to junior senators, as well as the ways in which he describes and reflects on his own successful performances, Kathryn Tempest, in chapter 11, demonstrates how a close reading of Pliny's *Letters* reveals valuable evidence for reconstructing aspects of his performative technique. After an initial discussion in which she summarises the main forum and opportunities for oratory in the Imperial period, Tempest argues that Pliny's discussions of oratorical performance are worthy of more consideration than they have hitherto been subjected to. Not only do these discussions enable Pliny to present himself as an exemplary teacher and pleader; he provides tell-tale signs in his letters that enable us to imagine him as an orator in action.

4 *Emotions*

In chapter 12, Dimos Spatharas looks into the ways in which Demosthenes employs *enargeia* in order to delineate his opponent's *hybristic* behaviour and arouse judges' legitimate envy in his speech *Against Meidias*. Spatharas argues that the use of *enargeia* appeals to potent cultural and ideological understandings related to the tensions between the masses and the elite in Athens. He also proposes that a full understanding of the theatrical aspects of forensic oratory must take into account the importance that ancient rhetorical theory and practice attributed to the visual qualities of narratives.

Edward Harris' chapter 13, meanwhile, examines the differences between the methods of "acting" on the tragic stage and in the Athenian courts. The use of tragic language and tragic exclamations was clearly considered inappropriate in Athenian courts. Litigants do not express strong emotions when addressing the judges: they do not describe themselves as angry or weeping. In their descriptions of violence, litigants tend to avoid graphic descriptions of physical suffering. When Demosthenes included physical details about the abuse of an Olynthian woman, the judges were said to have expressed their disapproval at his breach of decorum (Aeschines 2.4). This is in stark contrast to Attic tragedy, where such descriptions are commonplace. Litigants in court were expected to act in a restrained manner and to demonstrate *sōphrosynē*. Any excessive display of emotion would have been interpreted as an attempt to distract the judges from their duty to pay attention only to the legal charges and to uphold the law.

In chapter 14, Jon Hall examines some of the unusual actions undertaken by judges during certain trials of the Late Republican period. These actions suggest that judges enjoyed considerably greater latitude in their behaviour in court than is allowed in judicial settings in many Westernised societies today—a fact that Cicero often sought to exploit in his use of highly emotional pleading.

The judges' actions also show that they were not always willing to play the role of passive observer; on occasion, they sought to manipulate the court's highly public profile for their own political and personal ends. To this extent, they could be actors in Rome's theatre of justice, as well as its audience.

5 *Language and Style*

In chapter 15, Christopher Carey examines the ways in which oratorical performance enabled Aeschines to win a victory over his rival politician, Timarchus. The success of the prosecution, Carey argues in his chapter, was due to the ruthless brilliance with which Aeschines presented his case, an exquisite blend of circumstantial evidence, moral positioning and acting. The insistence on Timarchus' unrestrained oratorical delivery and debauched physique ties the narrative of past or distant incontinence to current excesses seen on the *bēma*. The effect is to link what is unseen and alleged to the visual memory of the audience and what they see in court, and give autopsy the illusion of evidence.

In chapter 16, Kostantinos Kapparis discusses performance elements in the speeches of Apollodoros (transmitted in the *Corpus Demosthenicum* as 46, 47, 49, 50, 52, 53, 59). Particular emphasis is given to the use of direct and indirect discourse, character portrayal, presentation and interaction with the opponent, *ekphrasis* and *enargeia*, addressing the audience and dramatisation of events in the legal narrative.

In chapter 17, Alessandro Vatri examines the linguistic differences related to the type of performance envisaged for each of the two groups of Antiphon's speeches, both the real logographic speeches and the fictional *Tetralogies*. Oratorical *hypocrisis* may use paralinguistic and non-linguistic elements in the expectation that readers may peruse the text at leisure. The lack of this possibility for forensic audiences suggests that speakers ought to optimise their text for real-time comprehension and internalisation. Linguistic analysis confirms that such was the case with Antiphon's logographic speeches.

PART 1

Speakers—Audience

CHAPTER 2

Audience Reaction, Performance and the Exploitation of Delivery in the Courts and Assembly

*Ian Worthington**

Introduction

The similarities between performance in the theatre and in the law courts and Assembly have been well studied.[1] All three venues were quite different in what they represented and what an audience expected—no one was actually on trial in a theatre, even though trials formed part of the plots of both tragedies and comedies, and while domestic and foreign affairs were often an integral part of a forensic speech, no judge when casting his vote knew that he was influencing his city's public policy. Despite the differences in what these three venues were about, there is the one common denominator of the performer—the actor on stage, the politician on the *bēma* and the prosecutor or the defendant before the judges. It has been rightly concluded that the orator in court or in the Assembly was often as much an actor as his professional counterpart on stage—nothing has changed over the centuries, as Reagan's famous quip, "How can a president not be an actor?", testifies. Performance mattered, something ancient critics made clear. Thus Dionysius of Halicarnassus, like Aristotle in *Rh.* 3.12 and Demetrius in *Eloc.* 271, argued that debate and especially delivery, which included intonation, gesture, gaze and movement—in other words, acting—were essential parts of political and forensic speeches.

Performance and delivery were arguably so inextricably linked that they were even synonymous, with both involving all aspects of how a speech was given to, and especially received by, its audience. In this chapter, I focus on the means of delivery that speakers used to exploit their audience's reaction in the court or the Assembly for the optimum rhetorical effect. Given the importance

* I am very grateful to the conference convenors, Andreas Serafim and Beatrice da Vela, for inviting me to give the keynote address at what was a hugely enjoyable, fruitful and successful conference, and for the comments of the editors of this volume on a draft of this essay. Remaining errors are of course my own.

1 Hall (1995) 39–58; (2004) 145–161.

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attached to performance, it is easy to understand why Demosthenes' early political speeches on fiscal and foreign policy, including the first *Philippic* of 351, all failed: not so much because of what he advocated or his ignorance of the subject matter—the reverse in fact since he spoke sensibly and in an informed manner on such matters—but because of convoluted and overly rhetorical arguments that a listening audience could not follow *and* a poor delivery.[2] He was booed and heckled while speaking, almost costing him a political career, as a section in his speech 13 indicates.[3]

Then Demosthenes' chance meeting with an actor—either the comedic Satyrus or tragic Andronicus—changed everything.[4] The orator was already overcoming the shortness of breath and weak voice that had plagued him until then, but more importantly the actor's tutelage caused Demosthenes to change his style and delivery to the extent that Dionysius later called his strong and forcible style "the most perfect form of oratory".[5] Moreover, Demosthenes attached the most importance in performance not to simply speaking well but to delivery or acting—thus when he was asked what he thought was the first thing in oratory, he replied "Delivery"; what was the second, "Delivery", and what was the third, "Delivery".[6]

Demosthenes' delivery and especially his forcefulness would propel him to great political influence. His extant political speeches demonstrate that he employed the same sorts of rhetorical techniques and levels of theatricality as in forensic speeches—although he was quick to introduce novel elements where he could. For example, in 344 Philip II of Macedonia proposed changes to the Peace of Philocrates of 346 that Demosthenes saw would be to Athens' detriment.[7] Apart from Aeschines and a handful of other men, the Athenians generally distrusted Philip, which attitude Demosthenes naturally exploited

2 Plu. *Dem.* 6.3, with Worthington (2013) 37–39; also: Pearson (1975) 95–109. Plutarch is admittedly drawing on earlier writers, and the anecdotes to overcome his speech deficiencies and delivery style may have been part of a later peripatetic tradition to elevate his reputation to show how he struggled: Cooper (2000) 224–245. Demosthenes later switched to a simpler style (and delivery?) better suited to a listening audience: Worthington (2013) 88.

3 D. 13.12–13, with Worthington (2013) 131–132.

4 Satyrus: Plu. *Dem.* 7.1–5; Andronicus: [Plu.] *Mor.* 845a–b, Phot. 265 p. 493b, *Suda*, delta 456, with Roisman, Worthington, Waterfield (2015) 222–223, on the different actors in the same anecdote. The point to be emphasised is that it was an actor who took Demosthenes under his wing.

5 *Is.* 20. Similar sentiments were also expressed in Cic. *Brut.* 35 and Quint. 10.1.76; see too Cooper (2004) *passim*.

6 [Plu.] *Mor.* 845b; also: Plu. *Dem.* 7.1–5, *Suda*, delta 456.

7 Worthington (2013) 193–195.

in his second *Philippic* of 344. Instead, however, of merely reiterating Philip's treacherous exploits or anticipating his future aims, Demosthenes embedded in the narrative of that speech a novel, psychological insight into the king's thoughts so much so that we can almost hear the tones of indignation and imagine him emphatically jabbing his fingers at the Assemblygoers (6.17–18):[8]

> Think about it: he wishes to rule and regards you as his only rivals in this. He has been acting unjustly for a long time now and is himself fully conscious of doing so, since his secure control of everything else depends on his keeping hold of your possessions. He thinks that if he were to abandon Amphipolis and Potidaea, he would not even be safe at home. He is therefore deliberately plotting against you and knows that you are aware of this. He believes that you are intelligent, and that you justifiably hate him, and is spurred on by the expectation that he will suffer some reverse at your hands, if you seize the opportunity to do so, unless he anticipates you by acting first.

Of course, Demosthenes did not know what Philip was thinking, or indeed what his intentions were—no one did apart from Philip himself. However, Demosthenes seized on the Athenians' suspicions of Philip and theatrically accused him of plotting to destroy them. In doing so he persuaded the people to reject Philip's offer to amend the peace.

In this chapter, I consider the importance attached to delivery in the courts and Assembly, especially in response to audience reaction and the different expectations of the judges and Assemblygoers. We might imagine that—like today—a speaker acknowledged a round of applause or a shout of "he's right, you know" by a nod or a smile (and felt some relief on the inside that all was going well), but what happened when there was an adverse reaction, when people heckled a speaker or grew impatient, as the Demosthenic *prooemia* tell us happened at Assemblies?[9] Presumably the professional actor took this sort of thing in his stride—Aeschines was hissed on stage, claims Demosthenes (18.262), but that did not stop Aeschines from staying on stage. However, what about the amateur or inexperienced person, who, for example, found himself in court for the first time? Could this person not only memorise what might be a complicated speech (especially in the *pistis*) that a *logographos* may have

8 Translation: Trevett (2011) ad loc. Demosthenes and psychology: Mader (2004) 56–69; Usher (1999) 233.

9 Worthington (2004) 129–143, and see further below.

composed for him but also perform it as well as a veteran speaker, and did his audience, the judges, expect him to do so? Likewise, how might a speaker in an Assembly deal with his topic when the text he had memorised needed supplementing because of new directions in the debate or crowd reaction? As we shall see, speakers in the Assembly, eager to find success in their public careers, had to be more adept at performance than those in the courts.

1 Assembly Speaking

Speakers in both Assemblies and courts were under great pressure. They had to memorise what I believe was a written, prepared speech for them addressing the issue at hand. This memorisation was no easy task, as Alcidamas tells us speakers "had to learn precisely the arguments and the words and the syllables" (*Soph.* 18). I have argued elsewhere that the version of the speech we have today was not the one given orally because of the revision process, but if we accept that we have at least the gist of the prepared, oral version, then we can see that memorising it took time and effort.[10] To forget what one was saying, or had to say, had disastrous consequences. For example, in 346 Demosthenes was one of ten ambassadors that travelled to Pella to negotiate an end to the war with Philip that had broken out in 357.[11] Each of the ten ambassadors that comprised this first embassy was to deliver a prepared speech before the king, but when it was Demosthenes' turn—the last to speak because he was the youngest—he froze. In Aeschin. 2.34–35, admittedly a hostile source, we are told that:[12]

> [Demosthenes] in a voice dead with fright, and after a brief narration of earlier events suddenly fell silent and was at a loss for words, and finally abandoned his speech. Seeing the state he was in, Philip encouraged him to take heart and supposed that he had suffered a complete catastrophe ... But Demosthenes ... was now unable to recover; he tried once more to speak, and the same thing happened. In the ensuing silence the herald asked us to withdraw.

Perhaps in the context of a diplomatic mission to a hostile king, performance mattered little as the set speeches of the ambassadors were meant to speak for

10 Worthington (1991) 55–74.
11 Worthington (2013) 164–168.
12 Translation: Carey (2000) ad loc.

themselves. But reciting a memorised speech could not have been enough to win a case in court or persuade an Assembly; speakers had to bring it to life to sway their audiences. Thus in challenging the judges to find Neaera guilty, Apollodoros says ([D.] 59.110–111):

> And when each of you goes home, what will he find to say to his own wife or his daughter or his mother if he has acquitted [Neaera]? When the question is asked of you: 'Where were you?', and you answer: 'We sat as a jury'; 'Trying whom?', it will at once be asked. You will say: 'Neaera'. And you will narrate all the other details of the charge. (111) And the women, when they have heard, will say: 'Well, what did you do?' And you will say: 'We acquitted her'. At this point, the most virtuous of the women will be angry at you for having deemed it right that this woman should share in like manner with themselves in the public ceremonials and religious rites.

This is great dramatic immediacy! Images of the cowed wife subservient to the *kyrios* are exploded by this scenario, which has to be a true reflection of life in the *oikos* because Apollodoros cannot afford his judges to look askance the domestic picture he paints. He wants them to squirm uncomfortably, imagining angry wives lambasting them if they acquitted Neaera. In the process, we can imagine—just by reading the speech as we have it today out loud—that he would have used different tonal intonations, facial expressions (frowning for example) and emphatic hand gesticulations to hammer home his point. Apollodoros, a politically active citizen, was an old hand at speaking though, so dramatisation came easy for him. Presumably it did not to an ordinary man who sought legal redress once or perhaps twice in his life and who needed a *logographos* to write his speeches. Presumably that is why many forensic speeches present the speaker as young and inexperienced or slow and dim-witted so as to earn the judges' goodwill precisely because he might perform poorly. Take as an example Euphiletos, the speaker of Lys. 1.

Euphiletos caught his wife having sex with her lover Eratosthenes and killed him on the spot, pleading justified homicide in his defence. Euphiletos is a small farmer, who is presented as a salt of the earth, loyal and law-abiding citizen and husband. He goes home every night after a day's labour on his farm and has placed all his affairs and trust in the hands of his wife, whom he loves. Yet his wife takes advantage of her husband; she enters into an adulterous relationship with Eratosthenes, scheming with her servant girl to this end and thinks nothing of the damage she is causing to her *oikos* and even the *polis* because of her affair. When Euphiletos finds out and kills the

treacherous Eratosthenes, we cannot help but think that Eratosthenes got what he deserved; after all, Euphiletos acted within the law. He must be acquitted, as he says, so that the judges send out a warning to deter other adulterers from seducing men's wives and damaging the *polis*.

We have this reaction today based on our reading of the speech, but of course in Athens this speech was not read but delivered. In his interesting book on gesturing, Alan Boegehold claimed that: "the person who performed the text hardly needed to be told to use his body as well as his voice. It is how he conducted himself every day no matter whether he was addressing a court or not".[13] This is doubtless true for someone like Pericles or Demosthenes, who had long careers in public affairs, and who were both selected to deliver *epitaphioi*, something that fell only to those orators held in the highest public esteem (Th. 2.34). Indeed, Pericles' power was so great that though Athens was in name a democracy he came to rule it according to Thucydides (2.65.9), and in the 340s Demosthenes' anti-Macedonian policy became that of Athens. However, the statement surely cannot ring true for the person who might never have been to court in his life, and so had no special speaking skills—like Euphiletos. There was a big difference between arguing about the price of a cabbage in the Agora, say, and appealing for one's life before judges.

There are plenty of performance markers in Lysias' speech, so strong in fact that they require the speaker to follow them, which indicate that Lysias may even have given Euphiletos some coaching tips on simulated extemporaneous comments, different tonal intonations, gesturing and even significant pauses. We may imagine the judges smiling or even laughing as Euphiletos described his playful run-in with his wife when their baby was crying, perhaps even reinforced by finger-jabbing and holding his hands wide in a gesture of disbelief (12–13):

> When I grew angry and told her to go she said: "Oh yes, so that you can have a go at the serving girl here! You have groped her before too when you were drunk!" I for my part laughed while she stood up, went out and closed the door, pretending she was joking, and then turned the key.

And surely he acted out the fight scene he excitedly described when he finally caught Eratosthenes in bed with his wife (25):

13 Boegehold (1999) 78.

> I knocked him down with a blow, gentlemen; I forced his hands behind his back and tied them, and asked him why he was insulting me by entering my house.

Lysias has presented us with a decent, ordinary man who was not especially quick on the uptake until the servant of one of Eratosthenes' jilted lovers revealed his wife's schemes to him. Then it was like a cloud lifting: everything fell into place—Euphiletos was simply the typical cuckolded husband, always the last to know. Lysias wanted him to be seen as naïve, unsuspecting of his wife's adultery and loyal to her (especially after the birth of their child, 1.6), so that the judges believed that he actually was like that. That naive persona lent credibility to his claim that he noticed his wife wearing make-up although his mother has been dead less than a month, but thought nothing of it, or that he heard his door bang in the night, but accepted his wife's explanation that she was merely going to get a light from the neighbours. After all, he was now on trial for his life and has to convince the judges that he did not plot to kill Euphiletos: he was just a maltreated husband who obeyed the law. Perhaps we have Lysias' speech today because it was successful, and so Euphiletos the farmer delivered a convincing character performance.

The fate of a speech, then, lay solely in the hands, or rather performance, of the speaker. Euphiletos may have performed well and kept the judges on his side, but some inexperienced speakers must have forgotten their speeches or turned in lacklustre performances, either through genuine forgetfulness or feelings of intimidation. In doing so they must have sensed an adverse reaction on the part of the judges. After all, distortion or even abandonment of parts of the proof or even the narrative, for example, would seriously diminish a speech's impact and cause the speaker to lose track of what was to have come next. Plausibly some men may have tried to cover up such losses by improvising, and perhaps some extemporaneous comments in extant speeches were impromptu comments that worked on the day, and so were retained in the revised version. However, departing from a memorised text was dangerous because of the time factor: once the water ran out there was no overtime.

Hence, I suggest that in the forensic arena the performance went hand-in-hand with the memorised speech. There was little to no room for individuality in the sense of changing presentation or argumentation without suffering the potential consequence of losing the case, and the even direr consequence of a defendant losing his life if it were a capital case. Speakers had to perform a juggling act between what they were saying and how they were saying it to remain as consistent with their character as they could, regardless of audience response.

2 Demosthenic Prooemia

The Assembly was an utterly different venue, in which debate might lead even the most experienced speaker from what he might have prepared. Of course, since the agenda of an Assembly was known in advance, and if the same politically active men addressed the people most of the time, as Hansen has shown,[14] a speaker might well anticipate what someone was going to say and fashion his speech accordingly. Thus at the start of the first *Philippic* Demosthenes suspected that the same people were going to say the same things about Philip, which prompted him to brush aside etiquette and even the law permitting men over the age of fifty to speak first at Assemblies, and confidently assert that (4.1):[15]

> If some new matter were the topic of discussion, men of Athens, I would have waited until most of the regular speakers had given their opinion, and if anything they said pleased me, I would have kept quiet; only if it did not would I have ventured to state my own opinion. But since we are dealing with matters that these men have often addressed on previous occasions, I think that I can reasonably be forgiven for standing up to speak first. For if they had given the necessary advice in the past, there would be no need for you to be deliberating now.

Almost all of the extant political speeches are Demosthenic, and from them we can see similarities in rhetorical techniques and tricks as in forensic oratory.[16] However, in an Assembly audience reaction could never be predicted; speakers needed to respond rapidly to new directions and improvise as debate ensued in order to score points over opponents. Merely learning things like sets of arguments (*antilogiai*) as Protagoras was said to have drawn up to help one argue effectively in court or Assembly or rhetorical pieces and even set speeches as per Gorgias was not enough. They had to be more adept at performance than their counterparts in the courts, for if the latter departed too much from their prepared speeches they harmed their case.

Indeed, there were debates where no one knew what might be said in the first place. Here, let us return to Demosthenes' second *Philippic* of 344, in

14 Hansen (1989a), (1989b), (1989c).

15 Translation: Trevett (2011) ad loc.

16 [D.] 7 (*On Halonessus*) was most likely delivered by Hegesippus: Roisman, Worthington, Waterfield (2015) 36. D. 17 was likely not delivered by the orator, but the identity of its speaker is unknown.

which the orator called on the people to reject Philip's proposed changes to the Peace of Philocrates, and promised to tell them what to do. He started his speech by exhorting the Athenians to take action before moving to attack his opponents. But then, in section 28, after saying "You may deliberate later by yourselves about what we need to do, if you are sensible; but now I shall tell you what response you should vote for", there are no promised instructions. The speech ends abruptly a few sections later, at section 37. The speech is probably a draft because no one, including Demosthenes, knew in advance what Philip's changes were going to be—the first time they heard the specifics was when Philip's envoy Python actually stood up and told them.[17] Therefore, the first two parts of the speech had the usual bluster and criticism of Philip that suited any terms Python might deliver, leaving Demosthenes in the final part of the speech to address the specifics only after he had heard them. His speech was successful; clearly what he said and *how* he said it in the "missing" final part help rebut the criticism that he could not speak—or rather did not care to speak—extemporaneously.[18]

The need to cater to one's audience at an Assembly and change direction rapidly are shown by the Demosthenic *prooemia*, which refer to attendees heckling speakers if they disagreed with them or growing impatient over long-winded speeches, and taking it upon themselves to keep speakers on track if they thought they were tangential. For example, *Prooemion* 4:[19]

> Gentlemen of Athens, it is right to hear everything that is said since it is in your hands to choose whatever you wish. For it often happens that the same man speaks incorrectly about one thing but not about another; thus, by shouting him down when you are in a bad temper you may lose many beneficial ideas, but by listening in good order and quietly, you will do everything that is proper, and if you think someone is speaking stupidly you will ignore him …

Prooemion 17:

> Gentlemen of Athens, it falls on the man wanting to propose a measure to you to try to speak in such a way so you are able to stay focused on him, or if not this, to do away with all the other topics and advise on those things

17 MacDowell (2009) 331–332.

18 Worthington (2013) 40–41.

19 Translations of all *prooemia* are from Worthington (2006).

> which you are considering, and this in the fewest words possible. For it seems to me that it is not from any dearth of speeches that you now see all your affairs in disorder, but from the fact that some are speaking and taking part in political life for their own gain, and others who have not yet shown evidence of this, prefer rather to be considered to speak cleverly than that some beneficial act will come about from what they say. And in order that I do not do the opposite of what I myself say is right, and say more about other questions than what I stood up to discuss, I will ignore all other topics and will attempt to tell you what I advise right now.

And *Prooemion* 56

> (1) Gentlemen of Athens … I think that, if you are willing to be persuaded by me today, you will be more able to choose the best policy and make the speeches of those who climb up shorter. What, then, do I advise? (2) First, gentlemen of Athens, order the man who steps forward to speak about only those things which you are considering. For someone may include many other matters in his speech and say many funny retorts, especially if they are clever speakers as some are …

The audience-speaker dynamic expressed in the *prooemia* has already been the subject of discussion.[20] I mention it here to draw a line between performance in court and Assembly. If speakers in court sensed any of the negative responses the *prooemia* indicate for a political gathering, then there was little they could do to remedy the situation because they had to follow their speeches.

Athenian courts were noisy places and often speakers deliberately encouraged judges and spectators to raise an uproar or *thorubos*.[21] Assemblies were likewise noisy and speakers incited the crowd.[22] The *prooemia* indicate what the people did not want, hence speakers had to tailor their speeches to popular expectations if they wanted to be successful. They also had to be ready to act confidently and compellingly if something new were to come up. And, as in court, they could not forget what they were talking about otherwise they faced not only embarrassment but also failure, as Demosthenes experienced when he first met Philip II (see above)—although we shall revisit this passage below.

20 Yunis (1996) 247–257; Worthington (2004) *passim*.

21 D. 18.52, and in detail see Bers (1985) 1–15.

22 Tacon (2001) 173–192.

Speakers also had to conform to certain levels of decorum as the *prooemia* testify. Numbers 20, 31, 35 and 53 tell us, for example, that speakers were not to abuse opponents, not to name people, and that only past events that had proved detrimental to the state were to be discussed to show where the people had gone wrong in the past and exhort them not to make the same mistakes again. Aristophanes also stated in the *Ec.* 142–143 that anyone who used excess noise or bluster could be evicted from the Assembly. Yet reality was different from theory, where these levels of decorum were ignored because of personal performance.

Cleon, for example, was roundly criticised by Thucydides and the *Athenian Constitution*, which claims he was prone to "impetuous outbursts" and "was the first person to use bawling and abuse on the *bēma*, and to gird up his cloak before making a public speech, all other persons speaking in orderly fashion" (*Ath. Pol.* 28.3). Even allowing for the bias against Cleon by these authors,[23] his actions should have had him evicted from the Assembly, but that did not happen, presumably because his mannerisms were part of his style and delivery, and the people condoned that. As the so-called prototype demagogue Cleon brought into fashion a new and more aggressive style of rhetoric, censuring the Assemblygoers (whom he calls speechgoers) for how easily the rhetoric of the *rhētores* charmed them.[24] Likewise, Demosthenes was very much a Cleon in the arrogance of his tone, condemnation of the people and the manner of his performance, as Aeschines scornfully talks of his twirling around (3.167):[25]

> And again when you whirled around in a circle on the platform and said, pretending that you were working against Philip, "I admit that I organised the Laconian uprising, I admit that I am bringing about the revolt of the Thessalians and the Perrhaebi." You cause a revolt of the Thessalians? What! Could you cause the revolt of a village?

Eratosthenes of Cyrene tells us that Demosthenes was often frenzied or theatrical in his speeches (Plu. *Dem.* 9), and Demetrius of Phalerum called him an actor whose delivery was deliberately over the top so he would appeal only to the masses (F 134 Fortenbaugh-Schütrumpf). Like Cleon, Demosthenes acted

23 Woodhead (1960) 289–317; Gomme (1962) 112–121; Yunis (1996) 87–103.

24 Th. 3.36–48; see further: Connor (1971), Ober (1989), Yunis (1996), Worthington (2007) 255–271. Rhetorical exploitation of language: López Eire (2007) 336–349.

25 Translation: Carey (200) ad loc.

out on the *bēma* in a manner that appeared contrary to the expected behaviour of the *proemia* but crafted to fit his audiences.[26]

But did Demosthenes, like Cleon so we are told, really not have self-control (*enkratēs*) on the *bēma*? After all, Aeschines was Demosthenes' bitter enemy, and the equally critical opinion of Demetrius of Phalerum was the product of a hostile, peripatetic tradition, motivated by issues of morality rather than appreciation of a rhetorical style.[27] Yet even if Demosthenes', or Cleon's, actions were against the norm, there is a difference between a bad performance and one that is deliberately over the top to attract attention and has people talking about it—and the speaker—afterwards. I suggest that Demosthenes was using his movements, Cleon too, as another means of connecting with the audience. This view is hardly surprising, given that thousands of men attended the Assembly compared to the few hundred that sat on a regular jury. Aeschines' loud and emphatic voice, honed from his acting career, presumably helped him here, but not every speaker had that experience. Speakers on the *bēma* needed to do something to keep the attention of their mass audience as a facial gesture or different vocal intonation could not be properly seen or heard by those sitting further away—it has been estimated that only about one-fifth of attendees could actually hear speeches well enough to follow them.[28]

A case in point is the impact of the actions of Aeschines and Philocrates during the Assembly held on the 16th Skirophorion 346 after the second Athenian embassy returned from Philip with his oath to the Peace of Philocrates. Demosthenes was still cautioning the people—correctly as events bore out—that Philip was untrustworthy and to be skeptical of anything that Aeschines, who supported the king, said.[29] Then Aeschines and Philocrates suddenly jumped up to flank Demosthenes and heckle him, with Philocrates famously remarking "no wonder that Demosthenes and I cannot agree, for he drinks water and I drink wine" (D. 19.23–24, 44–46). It would have been hard to plan that interruption beforehand as both men would not actually know what Demosthenes was going to say; their action is a testimony to their improvisation. The audience erupted into laughter and sided with them, thus responding to their performance in muzzling Demosthenes.

If Demosthenes resorted to unexpected behaviour for dramatic effect, we can hazard an explanation for why he froze before Philip during the first embassy in 346, as mentioned above. Demosthenes' first political speeches of

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26 Yunis (1996) 237–277.

27 Cooper (2000) 224–245; also: Cooper (1992).

28 Johnstone (1996) 97–128.

29 Worthington (2013) 175–176.

the mid to late 350s all failed—yet in court his speeches against his unscrupulous guardians from a decade earlier were successful.[30] Whether his teacher Isaios wrote them for him is immaterial because it was Demosthenes who delivered them, and successfully despite his youthful age and inexperience. Clearly, Demosthenes could speak before people. Perhaps, then, he did not freeze before Philip—or rather that the freezing was deliberate, to get him noticed in a way that merely giving a speech echoing nine previous ones would not. Six years earlier, in 351, the opening of the first *Philippic* (quoted above) shows that he had no desire to be pre-empted by other speakers and be at the tail end of a line-up of speakers. The same may well be true for the first embassy in 346. Moreover, his performance, or seeming lack thereof, on that embassy did not hold him back when he returned to Athens, where he dominated the Assembly meetings discussing the peace and was selected to go on the second embassy weeks later. Further, on that second embassy Demosthenes did not falter once, even resorting to the theatrical tactic of flourishing one talent of his own money towards the ransom costs of Athenians taken prisoner by Philip at Olynthus in 348.[31]

3 Conclusions

In conclusion, while there was a high degree of performance necessary to convince judges to vote in favour of prosecutor or defendant, even when speakers were inexperienced in court, that performance was necessarily attuned to and limited by the parameters of the speech. Regardless of how the speaker read the reaction of the audience, judges, spectators or both, it was dangerous strategy to depart from the memorised text, and as such speakers must have been pressured not to forget their text. In the Assembly speakers had to be more adept and flexible at performing, thinking fast and resorting to any means they could—the more eye-catching or surprising the better—to pitch their messages to several thousand citizens, all of whom had different ideas, expectations, even levels of knowledge, about the topics under discussion. Perhaps a reason for the far fewer number of men who consistently spoke successfully in the Assembly than in the courts was the different demands that each venue placed on speakers: it was one thing to speak but another to react to the audience and adjust performance accordingly.

30 Worthington (2013) 20–27.

31 D. 19.166–173; Aeschin. 2.97–100, 106–112, 139–142.

CHAPTER 3

'Conventions' in/as Performance: Addressing the Audience in Selected Public Speeches of Demosthenes

Andreas Serafim

Introduction

In this chapter, I intend to explore the use and the performative dimension of addresses to the audience in selected public speeches of Demosthenes (18: *On the Crown*; 19: *On the False Embassy*; and 24: *Against Timocrates*). Fundamentally, the chapter seeks to answer an important question: why does the speaker address the judges in some places, but the Athenians in general (judges and audience) in other places? Despite a few studies related to this issue, the use, form and purpose of addresses to the audience have not been widely appreciated by scholars.[1] This omission is unfortunate since, as will be argued here, addresses to the audience can be more than merely a matter of convention. The insertion of addresses reminds us that speeches were intended for oral delivery and that a fundamental aspect of law-court performance was the interaction between speaker and audience. When a speaker addressed the audience in an Athenian court, it was unlikely to be without meaning; he had specific purposes to achieve: to engage the hearers/viewers, to create a certain disposition in them towards the litigants and to affect the verdict of the judges.

1 Addressing the Audience: Forms and Performative Value

Before proceeding to the examination of the use and purpose of addresses in D. 18, 19 and 24, a brief discussion of the forms of address that the speaker had at his disposal and their performative dimension may be useful. The frequency,

1 Wolpert (2003) 537–555; Martin (2006) 75–88 tried to detect the factors that influence the choice of addresses in selected public and private speeches, but still without examining thoroughly their linguistic and pragmatic features and without placing emphasis on their performative dimension.

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position and form of addresses to the audience are not inevitable. The flexibility in this respect is underlined by the fact that the speakers had at their disposal a choice between three styles of addresses: civic (ὦ ἄνδρες Ἀθηναῖοι) which is used in political speeches; judicial (ὦ ἄνδρες δικασταί) which is appropriate only in a forensic speech; and descriptive (ὦ ἄνδρες) which could be used for any audience of adult men.[2]

The diversity of the options available to the speakers for addressing the audience serves to highlight as unusual the high frequency of the use of a specific address, ὦ ἄνδρες Ἀθηναῖοι, in Demosthenes' corpus of speeches: he uses this address more than his contemporaries do, at least on the basis of the limited evidence available to us.[3] This may be, to some extent, a matter of convention: it has rightly been argued that the nature of the case—public or private—affected, at least to some extent, the options available to the speakers in terms of the content of their speech, their arguments and the rhetorical strategies they employed.[4] Addresses to the audience are another area where the approach used was influenced, at least sometimes, by the nature of the case: the civic address, for example, is *normally* more appropriate in public than in private speeches.[5] There are some exceptions to the pattern that civic addresses are more usual in public than in private cases. In private speeches 55 and 56, for example, civic addresses to the audience are used in the following sections: 55.1, 3, 7, 8, 9 (two instances), 12, 14, 15; 56.37, 44, 47, 48. In these two speeches, there are also many references to the Athenians as being wronged by the plaintiff's opponent. This variation in using civic addresses in private speeches, however, does not invalidate the overall conclusion that civic addresses are more appropriate in a public than in a private speech. The boundaries between public and private speeches may have been less strict for

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2 Dickey (1996) 178–181. Dickey classifies ὦ ἄνδρες Ἀθηναῖοι as an "ethnic" mode of address, but I prefer Martin's term "civic"; Martin (2006) 79. Dickey also calls the address ὦ ἄνδρες δικασταί "occupational", but I prefer the term "judicial". I thank Brenda Griffith-Williams for help on this point. It should be noted that there are also variations in the use of these three "standard" addresses, such as ὦ Ἀθηναῖοι instead of ὦ ἄνδρες Ἀθηναῖοι and ὦ δικασταί instead of ὦ ἄνδρες δικασταί, especially in Hyperides' papyrus. For Martin (2006) 76 n. 8, these variations are due to mistakes made by scribes.

3 According to some rough calculations after a search through the online *Thesaurus Linguae Graecae* database, there is no occurrence of the civic address in Antiphon, Hyperides or Isaios. It is used only twice in Isocrates; 7 times in Lycurgus, 24 in Andokides, 36 in Lysias, 59 in Dinarchus, 99 times in Aeschines, and 406 in Demosthenes' public speeches. It is worth mentioning that Demosthenes never uses the descriptive ὦ ἄνδρες.

4 Rubinstein (2004) 187–203; (2005) 129–145.

5 Martin (2006) 75–88.

the ancient Greeks than what we tend to believe, but the data shows the clear tendency for civic addresses to be used in public cases more than in private ones.

The choice of one of the three possible options for addressing the audience in the court was not merely a matter of convention, however. Addresses to the audience, I argue, are used strategically as a means of winning the audience over by inviting them to think of their role in the court in a specific way that then affects their judgement. This is the cognitive/emotional performative potential of addresses. Cognitive/emotional techniques include a wide range of strategies that contribute to the overall performance, albeit in a less direct/sensory way.[6] That is to say while the use of gestural and vocal ploys in the delivery of the speech, what ancient rhetorical theory calls ὑπόκρισις, allows an easily interpretable direct/sensory performative dimension, I argue in this chapter for the possibility of more subtle communication between the speaker and the audience. As the Father of Performance Studies, Schechner, argues "performances exist only as actions, interactions and relationships".[7] This chapter takes the position that oratorical text makes fuller sense when consideration is given to the interaction of the speaker and the speech with the contemporary audience.[8] An important aim is to shed light on *what would the use of addresses have done* or *have been intended to do* in the mind of the judges and bystanders. This effect may take several forms: to elicit the audience's verbal or non-verbal reaction in the lawcourt; to engage their emotions; and to create in them a certain disposition

6 Several other oratorical techniques contribute to the overall performance in a similarly less direct/sensory way. One of the most important of these is the characterisation of the litigants (ἠθοποιία). The portraiture of litigants serves a twofold purpose: to create a persona oriented to the expectations of the audience, with the aim of inducing them to support and empathise with the speaker, and to depict the persona of the opponent as negatively as possible, aiming to invite the judges and onlookers to show their negative emotions towards him. For a detailed examination of the holistic approach to performance and a comprehensive discussion of direct/sensory and cognitive/emotional techniques in Attic forensic oratory: Serafim (2017).

7 Schechner (2006) 30.

8 The importance of the audience for performance is rightly highlighted in contemporary scholarship: without the audience, there is no performance, since performance is generated from the interactive relationship between the performer and the viewer/hearer. While, on the one hand, the performer "works" and "activates" the audience, so to speak; on the other hand, the audience is not simply a passive recipient of communication. On the interactive relationship between the speaker and the audience: Bauman (1975) 292–293, (1986) 3; Taplin (1985) 3; Fischer-Lichte (1992) 7; (2004) 334–336; (2010) 29–31; Pelling (2000) 2; Feral (2002) 5; Revermann (2006a) 159–175; Roselli (2011) 19–20; Serafim (2017).

towards the speaker and his opponent(s) by creating a grouping to which both speaker and audience belong, implicitly excluding the opponent(s).

This suggestion raises some difficult questions: to what extent might the address to the audience be a result of revision? Did the audience really notice that the speakers were addressing them in the way I argue? Whether these addresses were included into the script after revision or not is hard to say with absolute certainty given the state of our knowledge. It is generally true, of course, that the extant speeches do not in every particular include the *ipsissima verba* of what was said in the court. Common sense, however, would suggest that of all the things that one might include in a written script after the event, addresses to the audience are perhaps one of the more unlikely additions. The nature of the address makes it more likely than not that they were in the original speech. Addresses may have deliberately been retained from the oral version to give a sense of dramatic immediacy to the speech and to conjure up in the minds of the listeners/readers of the revised version the image of the setting of the speech. A direct address to the judges, a mention of bystanders listening to what was going on, the steps that speakers take to combat any hostile reactions of the audience (heckling and shouting) all bring the original scene to life and allow the "revised audience" to picture the original better.

The second question—whether the audience perceived the strategic use of the addresses—opens in turn the broader issue of audience's competence. Aristotle is sceptical about the ability of the majority of spectators in a theatre to recall even the most well-known material (*Po.* 1451b23–26). *Pace* Aristotle, however, modern theorists express different views: Revermann, for example, argues that the Athenian audiences in the fifth and fourth centuries, despite the diversity in the degree of their general perceptiveness, education and performance experience, were competent enough to recognise and interpret rhetorical effects at least at a basic level.[9] This is because the Athenians were not simply theatregoers, but also theatre-partakers: they took part in choruses or they worked behind the scenes—thus, getting invaluable experience and "possessing a bare minimum of skills (e.g., linguistic, visual, cultural) to make sense of and enjoy a play".[10] This bare minimum of skills can also be obtained in several settings other than the theatre, wherever people took part in the proceedings. Given the prevalence of rhetoric and the rule of the law in the 4th century, and given the fact that the Athenians were familiar with the

9 Revermann (2006b) 99–124.

10 Roselli (2011) 51.

proceedings in courts and deliberative bodies at deme level and in the Boule, one can safely assume that they could recognise rhetorical patterns, especially those that are ubiquitous in speeches, and understand their intended effects. And given that the law-court audience comprised theatregoers, I would argue that a level of performance awareness would have been retained, despite the differences in the nature of theatrical and court performances.

2 Addresses in Demosthenes 18 and 19

I now turn to the examination of addresses in those public speeches of Demosthenes that form the focus of this chapter. The choice of the speeches 18 and 19 is not random: despite these speeches being among the most talked-about in classical scholarship on the Greek orators, little attention has been paid to their linguistic and pragmatic features and, in particular, the performative use and purpose of addresses to the audience have been disregarded to date. The frequency and use of addresses to the audience can reveal a great deal about the way the speaker attempts to influence the verdict of the judges. Demosthenes uses the civic address 65 times in the 343 sections within speech 19 (or approximately 18.95 %), and the judicial address 12 times (or approximately 3.5 %).[11] Although the civic address is used more times than the judicial address in Demosthenes' public speeches, the fact that, as mentioned earlier, there is nothing inevitable in the form, frequency and position of addresses, makes it valid for them to be taken as reflecting specific purpose(s) of the speaker.

The civic addresses represent the speaker reaching out to his core audience, especially if we recall that a proportion of the members of the viewing audience were foreigners.[12] The identification of the vital Athenian audience is accomplished by the creation of a group that shares ethnicity, patriotism and common values. Demosthenes invites the audience to think that he him-

11 The percentage given in the brackets is the quotient of the division of the number of instances and the total number of sections per speech.

12 Demosthenes offers no clear description of the composition of the audience in the Embassy trial. Nonetheless, it is safe to assume that the audience would have consisted mainly of Athenians as the trial is about the policies and actions of two prominent Athenians, Aeschines and Demosthenes. It is, of course, highly likely that citizens of other Hellenic cities attended such a high profile trial. We know from other speeches that the law-court contests of Demosthenes with Aeschines gained the interest of the Athenians as well as other Hellenes (Aeschin. 3.56).

self, the sender of the civic message, and the Athenians in the law-court, the receivers of it, are patriots and that they share a duty to protect Athens. He appeals, in effect, to the civic pride of the audience. I call this technique of creating a rhetorical consensus "the rhetoric of community".[13] The speaker's goal is not only to insinuate himself into the favour of the people but also to estrange Aeschines, presenting him as being alien and inimical to the values of the Athenian community. This is called, in what follows, a "We-They" pattern: and in this context addresses function as a means for the speaker artfully to construct the audience's frame of mind, by binding himself with the audience ("We"), while simultaneously estranging his opponents from the group ("They").

A good example, which shows how he attempted to achieve his "We-They" purpose, is in 19.96:

> ἣν δέδοικα μέν, *ὦ ἄνδρες Ἀθηναῖοι*, δέδοικα, **μὴ λελήθαμεν** ὥσπερ οἱ δανειζόμενοι ἐπὶ πολλῷ ἄγοντες· τὸ γὰρ ἀσφαλὲς αὐτῆς καὶ τὸ βέβαιον **οὗτοι προὔδοσαν**, Φωκέας καὶ Πύλας·
>
> As for peace, I am indeed afraid, men of Athens, afraid that, without realising, we have been enjoying it like men borrowing money at high interest; for these men have betrayed the security and confirmation of it—Phocis and Thermopylae.[14]

Particular attention should be paid here not so much to the accusation that Aeschines is a traitor—important as that is—but rather to some of the stylistic details such as the use of the first person plural after the civic address (μὴ λελήθαμεν). Demosthenes could have used the second person plural and it could be argued, therefore, that the use of the first person plural is a means of putting the ἄνδρες Ἀθηναῖοι and himself on the same side. He begins by addressing the group, but he then absorbs himself into the group, so to speak. Aeschines, as would be expected, is placed on the opposite side, as the phrase οὗτοι προὔδοσαν indicates. This sharply contrasted imagery—patriots *versus* traitors—engrained in and reinforced by specific wording, gives a sense of putting two

13 On the rhetoric of community: Serafim (2017). For Hölkeskamp (2013) 19–20 this is called "the rhetoric of inclusion". Another discussion of the way addresses to the audience work in constructing rhetorical consensus can be found in the chapters of Griffith-Williams and van der Blom in this volume.

14 Translation of D. 19: MacDowell (2000); D. 18: Yunis (2005); D. 24: Murray (1939) unless when otherwise indicated.

enemies face to face, especially inasmuch as the deictic pronoun (οὗτοι) is highly likely to require the use of gesticulation, with a view to turning the gaze of the audience towards Aeschines and his accomplices.[15] The use of the civic address fits well in this context as a means of reminding the judges of their ethnic origins and inviting them to think that their vote is important for Athens.

This "We-They" pattern that is accompanied by the use of a civic address is also at work elsewhere, as for example, in § 142:

> τοῦτο δὲ *καλόν*, *ὦ ἄνδρες Ἀθηναῖοι*, καὶ σεμνὸν εἰς ἀρετῆς λόγον καὶ δόξης, ἣν *οὗτοι χρημάτων ἀπέδοντο*. *ἀντιθῶμεν* δὴ τί τῇ τῶν Ἀθηναίων πόλει γέγονεν ἐκ τῆς εἰρήνης, καὶ τί τοῖς πρέσβεσι τοῖς τῶν Ἀθηναίων […]
>
> Which is a fine thing, men of Athens, and a substantial asset to one's merit and reputation—which these men sold for money. Let us compare, then, what the city of Athens has gained from the peace and what the Athenian ambassadors have gained […]

The combined use of the civic address and the "We-They" pattern, in this context, points to Demosthenes' purpose to create a group with consciousness of the bonds that connect its members and exclude Aeschines. Something similar is also at work in § 267:

> καὶ οὔτε *τὸν ἥλιον* ᾐσχύνονθ' οἱ ταῦτα ποιοῦντες οὔτε *τὴν γῆν πατρίδ' οὖσαν*, ἐφ' ἧς ἕστασαν, οὔθ' *ἱερὰ* οὔτε *τάφους* οὔτε τὴν μετὰ ταῦτα γενησομένην αἰσχύνην ἐπὶ τοιούτοις ἔργοις· οὕτως ἔκφρονας, *ὦ ἄνδρες Ἀθηναῖοι*, καὶ παραπλῆγας τὸ δωροδοκεῖν ποιεῖ.
>
> And the perpetrators were not ashamed to face the sun, or their native land on which they stood, or shrines, or tombs, or the disgrace that would be the consequence of actions of that sort; such, men of Athens, is the madness and insanity produced by corruption.

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15 A recurrent element of forensic oratorical style is *deixis* (*ad oculos*). This literally means "display". Bakker (2010) 152 defines it as "the 'pointing' function of language, which involves the strategies by which the speakers place themselves in place and time as well as with respect to each other". As Bakker (2012) 396 rightly points out, some elements of *deixis*, such as words, expressions or demonstrative pronouns (*houtos*) indicate that the speaker points to the addressee. On *Deixis ad Oculos*: Bühler (1990) 94–95; Felson (2004) 254.

The reference to the sun, earth,[16] shrines and tombs of the ancestors is designed to make an appeal to the civic pride of the Athenians—in a sense to bring to mind the essence of Athens herself. The physical constituents of the city (i.e. the reference to sun and land), history and tradition (i.e. the reference to the tombs of those who fought for independence and freedom) and religion (i.e. the reference to the shrines) are three basic defining features of the shared community of the city. The emphasis placed here on the intersection of civic identity and religion creates, arguably, a suitable context where the civic address can be used most effectively. This particular mode of address, combined with the presentation of Aeschines and his associates as impious scoundrels distanced from the civic values that have just been foregrounded, aims to strengthen the sense of a civic in-group consciousness so as to bind Demosthenes with the Athenian audience and implicitly estrange Aeschines from them.

§ 259 and § 262 serve broadly similar purposes:

> Νόσημα γάρ, ὦ ἄνδρες Ἀθηναῖοι, δεινὸν ἐμπέπτωκεν εἰς τὴν Ἑλλάδα, καὶ χαλεπὸν καὶ πολλῆς τινὸς εὐτυχίας καὶ παρ' ὑμῶν ἐπιμελείας δεόμενον
>
> For a terrible disease, men of Athens, has fallen upon Greece, a serious one needing some very good luck and care on your part.
>
> ταῦτα νὴ τὴν Δήμητρα, εἰ δεῖ μὴ ληρεῖν, εὐλαβείας οὐ μικρᾶς δεῖται, ὡς βαδίζον γε κύκλῳ καὶ δεῦρ' ἐλήλυθεν, *ὦ ἄνδρες Ἀθηναῖοι*, τὸ νόσημα τοῦτο. ἕως οὖν ἔτ' ἐν ἀσφαλεῖ, *φυλάξασθε* καὶ τοὺς πρώτους εἰσαγαγόντας *ἀτιμώσατε*.
>
> Not to mince matters, this really does need serious attention, men of Athens, as that disease, spreading around has reached here too. While you are safe, guard against it and disfranchise those who are the first to have brought it in.

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16 This reference points to the special relationship between the Athenians and their land: they claimed that they were "sprung from earth" and that their ancestors had always lived in Attica from time immemorial. Autochthony is the Athenian myth *par excellence*: it is a part of the Athenian military record and at the same time, it is "a patriotic and civic myth embodying the unity of the Athenian community" (Loraux (2006) 210), frequently connected with democracy and always demonstrating the claimed nobility of the Athenians as a civic community. On autochthony: Pl. *Mx.* 237b, 245d; Lys. 2.17; D. 60.4. Also: Hall (1997) 54–55; Loraux (2006) 28–29, 210–214, 245–246.

The two most important features of these two passages are medical terminology and the civic address, the use of which in this context complements and reinforces the power of medical imagery. The speaker invites the Athenians—which is why the civic address is used in both passages—to assume the role of a doctor, to cure and then to purge the fatal disease which Aeschines represents. Demosthenes draws on the established analogy between the human body and the body politic: as doctors deal with an urgent situation, taking immediate action against disease, so the Athenians should hurry to provide the care necessary for the Athenian body politic.[17] They are therefore invited to think of themselves as bearing responsibility for any negative consequences for Athens should they fail to deal appropriately with the carrier and spreader of disease.

The combined use of medical imagery and civic addresses to the audience works on two levels: first, Demosthenes makes a quasi-medical diagnosis in which he likens Aeschines, his accomplices and the policies they represent to a fatal and infectious disease that has fallen upon Greece and spread around until it has reached Athens. The medical metaphor here aims to exploit the anxiety and fear associated with infectious diseases[18]—thus creating a negative disposition among the ἄνδρες Ἀθηναῖοι towards Aeschines, who is presented as a pernicious, infectious and contagious agent operating unseen.[19]

Secondly, Demosthenes warns the ἄνδρες Ἀθηναῖοι about the seriousness of the disease and urges them to be vigilant and take action against those spreading it (cf. Aeschines 3.114). In §262, he uses two imperatives in order to intimidate the Athenians and to highlight the significance of the actions that should be taken (φυλάξασθε … ἀτιμώσατε). Particular emphasis is placed here on the urgency of their actions against Aeschines: they should punish him while they are still safe (ἕως οὖν ἔτ' ἐν ἀσφαλεῖ)—and still can. The imperatives very neatly shift from metaphor to literal terminology while also rather cleverly

17 On the analogy between the human body and the body politic: Vegetti (1983) 459–469; Brock (2000) 24–34; Kosak (2000) 35–54; Kalimtzis (2000).

18 See Arist. *Rh.* 1382a21–26: "let fear be defined as a painful or troubled feeling caused by the impression of an imminent evil that causes destruction or pain. For men do not fear all evils, for instance, becoming unjust or slow-witted, but only such as involve great pain or destruction, and only if they appear to be not far off but near at hand and threatening; for men do not fear things that are very remote". On fear as a means of controlling the law-court audience: Rubinstein (2004) 188–189. For a survey of primary sources that discuss fear: Konstan (2006) 129–155.

19 Medical imagery is based on popular Athenian perceptions and real anxieties: Lys. 6.53; Pl. *Lg.* 881e. Also: Dodds (1957) 223; Brock (2000) 30.

spelling out the nature of the excision needed to stop the disease: just as doctors might cut out gangrenous flesh so the people who are polluting society need to be cut out from it.

Unlike speech 19 where, as mentioned above, there is variation in the use of addresses to the audience, Demosthenes 18 is unusual in containing just a single example of the judicial address, in §196 (cf. 22.1). The civic address is used forty-two times in this speech, however. The distinct preponderance in the use of the civic address in Demosthenes 18 underlines its generic atypicality: despite being judicial, delivered in court and aimed to persuade the judges to cast their vote to reject an indictment, this speech has affinities with the other two genres of oratory: deliberative and epideictic. Demosthenes 18 mixes legal and political pleas, considering past historical events and political processes, the actions of public figures and their intentions.

As introduced earlier in the chapter, the use of the civic address is a means of identifying the core Athenian audience. It is always necessary to bear in mind that Demosthenes had to address a heterogeneous audience that consisted not only of the Athenians but also of other Hellenes, as Aeschines points out in 3.56.[20] The identification of the core audience is not simply a matter of convention: when Demosthenes interrupts his argumentation or narrative to address the Athenians, he has specific purposes to achieve, one of the most significant of which is to impress upon the judges their role as representatives of the larger native population and their responsibility to act for the city.

The civic address to the audience, as mentioned above, also serves to allow Demosthenes to align himself with the Athenian community, while simultaneously estranging Aeschines. Another example that serves a similar purpose is in §52, where the audience is asked whether Aeschines was a hireling or a friend of Alexander:

20 Evidence drawn from other sources points towards the presence of foreigners, such as the Theban, Boeotian, Olynthian and Phocian exiles. For example, in *Against Diondas* 173v25–26 (a speech delivered a couple of years before the Crown trial, most probably in the period between 335–333 B.C.), Hyperides mentions the presence of Theban refugees in Athens in the wake of Alexander's destruction of the city in 335 B.C. There were also other groups of foreigners with an interest in these events who had been in Athens since the preceding decade. Aeschin. 2.142–143 refers to the Boeotian and Phocian refugees who were in Athens at the time of the embassy trial (around 343). There should have also been Olynthians, who had been granted refuge and Athenian citizenship. Since the trial took place in the summer of 330, the city would also have been full of merchants from other states and others who needed to be in Athens, many of whom could be expected to have an interest in a high profile trial such as this one.

> ἀλλὰ μισθωτὸν ἐγώ σε Φιλίππου πρότερον καὶ νῦν Ἀλεξάνδρου καλῶ, καὶ οὗτοι πάντες. εἰ δ' ἀπιστεῖς, ἐρώτησον αὐτούς, μᾶλλον δ' ἐγὼ τοῦθ' ὑπὲρ σοῦ ποιήσω. Πότερον ὑμῖν, ὦ ἄνδρες Ἀθηναῖοι, δοκεῖ μισθωτὸς Αἰσχίνης ἢ ξένος εἶναι Ἀλεξάνδρου; ἀκούεις ἃ λέγουσιν.
>
> But do I call you a hireling, formerly of Philip, now of Alexander, and all these men call you the same? If you do not believe me, ask them yourself or, rather, I will do it for you. Do you think, Athenians, that Aeschines is Alexander's hired hand or his guest? You hear what they say.

Demosthenes' attempt here to incite and control the reaction of the audience makes this section worth closer examination. The last staccato colon ("you hear what they are saying") may be a clue to the reaction of the hearers/viewers, who may have shouted out one of the two words μισθωτός or ξένος.[21] As the *Scholia Demosthenica* 104a–c report, the final period refers to the response of the audience: when Demosthenes mispronounced the word μισθωτός by putting the accent on the antepenult (μίσθωτος) the audience corrected him by uttering the right form of the word.[22] "Another story involves the poet Menander, who was said to have acted as a kind of cheer-leader of a small but vociferous body of supporters who shouted "Aeschines is a hireling", and Demosthenes accepted this as the sentiment of the whole audience" (source: *Scholia* 104b).[23] Although neither of these anecdotal stories may be (at least, fully) reliable,[24] nevertheless, they indicate that ancient readers recognised that Demosthenes sought to elicit from the audience the sounds he wanted.

As well as stimulating a hostile reaction to Aeschines, this interactive device may also serve to create a self-conscious awareness of civic identity in the lawcourt. To instruct the members of the audience to call Aeschines a Macedonian stooge is, in fact, to invite them to perceive that there is a gap between themselves and this "hireling" of the Macedonians. In this context, the use of the civic address is not random: it aims to create a shared civic spirit between the hearers/viewers in court, who are invited to think of themselves as being mem-

21 On the word ξένος: Konstan (1997) 33–37.

22 Also: Couch (1944) 173–174; Tacon (2001) 178–179; Yunis (2001) 140. Another anecdotal story about Demosthenes' strategic mispronunciation of words is recorded in Plu. *Dem.* 845b, where we are told that the speaker mispronounced the name of the god Asclepius to note that this god is benign (Ἀσκλήπιος instead of Ἀσκληπιός).

23 Also: Usher (1993) 190.

24 On the questionable accuracy of *Scholia*: Yunis (2001) 140.

bers of a civic group from which Aeschines is excluded. The civic address is also an indication that Demosthenes seeks to be engaged in dialogue with the Athenians in court. The address, coupled with the question that follows and the mispronunciation of the word μισθωτός, seeks to provoke a precise audience response that serves Demosthenes' purpose to undermine Aeschines and estrange him from the audience.

The example in § 52, therefore, indicates how the use of civic addresses in Demosthenes 18 can be highly strategic, while further highlighting the use of the judicial address in § 196:

> Ἔστι δὲ ταυτὶ πάντα μοι, τὰ πολλά, πρὸς ὑμᾶς, ἄνδρες δικασταί, τοὺς περιεστηκότας ἔξωθεν καὶ ἀκροωμένους.
>
> Gentlemen of the jury, all this long story is intended for you, and for the people who stand outside the barrier and listen.

Although it might be argued that this is a random variation, the particular context indicates that there may also have been strategic reasons for the use of the judicial address. Demosthenes may well have used the civic address, while also referring to the bystanders, as Dinarchus does in 1.66: τί γὰρ ἐροῦμεν ὦ Ἀθηναῖοι πρὸς τοὺς περιεστηκότας ἐξελθόντες ἐκ τοῦ δικαστηρίου “what shall we say to the bystanders, Athenians, when we come out of the court”. So “the specific reference [in Demosthenes 18.196] to their being judges is optional, not ‘required’ ”.[25]

I suggest that in contrast to the “We-They” pattern created by the civic address, the judicial address, as used in Demosthenes 18, creates a “They-You” pattern, which reminds the judges that they have a judicial function, which distinguishes them from mere bystanders. This distinction between the judges and the onlookers may serve to invite the first to think that the second watch and evaluate their law-court performance. The subtle reference to the presence of the bystanders that judge those bearing the responsibility to judge, implicitly exploits the intrinsic similarities of the law-court with theatre. A vital part of both kinds of performance is spectacle: the judges are the object of gaze, just as actors are gazed upon onstage, and both should meet the expectations of the audience. To appreciate the subtlety of this technique, it is important to bear in mind that the judges were not subject to the state process of examination of accounts (*euthyna*). The presence of bystanders and onlookers “may have

25 Martin (2006) 79.

served as an informal *euthyna* for judges, since it insured that the judges could not make collective judgements without the immediate knowledge of a section of the community".[26] The implied reference to the gaze, therefore, offers a tacit surrogate for the audit process.

3 Addresses in Demosthenes 24

As has already been mentioned, the nature of the case—public or private—affected, at least to some extent, the options available to the speakers in terms of the content of their speeches, the arguments and the rhetorical strategies employed.[27] The different nature of speeches is also highly likely to have affected the form of addresses to the audience. That is to say, the judicial address is *normally* used much more frequently in private speeches, whereas the civic address is more frequent in public speeches.[28] A notable exception to this pattern is in Demosthenes 24, *Against Timocrates*. Although this is a public speech, the judicial address is used 32 times (or approximately 14.67 %) compared with 19 instances of the civic address (or approximately 8.71 %). This exception makes the speech worth closer examination.

Variation in the use of addresses is not surprising in a speech that discusses both the legal and political dimension of the law that Timocrates was trying to introduce. The speech is divided into two sections: in the first, from § 111 to § 154, there is a high concentration of judicial addresses—22 in total, while there is no instance of the civic address.[29] This is the part of the speech where Demosthenes focuses on legal issues: he compares legislators of old times, especially Solon, with Timocrates; he refers to the punishment of crimes by the existing legal statutes; and he mentions why and how a legislator of inexpedient laws should be punished.

26 Lanni (1997) 189. Although the ballot was secret and, in practice, nobody could ever know how each of the judges voted, nevertheless, orators frequently aim to create anxiety that the individual would be tainted with the collective outcome (Din. 2.19; Lys. 12.91). Hunter (1994) 101: "private matters were bared to the public at large, both judges and bystanders, who then passed on all that was exciting, controversial or important to their families (Aeschin. 1.186–187; D. 59.110–111) and no doubt to their friends and acquaintances as well. Thus the court became a route to the whole city". On social control: Ober (1989) 148–151; Hunter (1994) 96–119; Lanni (1997) 189.

27 See n. 36.

28 See n. 37.

29 Martin (2006) 83.

In § 123, for example, Demosthenes distinguishes politicians from the judges arguing that the former legislate both in order to give themselves the liberty of transgressing the laws and to suit their private ends, while the latter do not.

> Ἄξιον τοίνυν καὶ τοῦτ’ εἰπεῖν, ὅσον ὑμεῖς διαφέρετ’, ὦ ἄνδρες δικασταί, μεγαλοφροσύνῃ τῶν ῥητόρων. ὑμεῖς μέν γε τἀπὶ τῷ πλήθει νενομοθετημένα δεινά, ἐάν τις ἢ διχόθεν μισθοφορῇ ἢ ὀφείλων τῷ δημοσίῳ ἐκκλησιάζῃ ἢ δικάζῃ, ἢ ἄλλο τι ποιῇ ὧν οἱ νόμοι ἀπαγορεύουσιν, οὐ λύετε, καὶ ταῦτ’ εἰδότες ὅτι διὰ πενίαν ⟨ἂν⟩ ποιήσειεν ὁ τούτων τι ποιῶν, οὐδὲ νόμους τοιούτους τίθεσθ’ ὅπως ἐξουσία ἔσται ἐξαμαρτεῖν, ἀλλὰ τοὐναντίον ὅπως μὴ οὗτοι δ’, ὅπως οἱ τὰ αἴσχιστα καὶ τὰ δεινότατα ποιοῦντες δίκην μὴ δώσουσιν.
>
> Another remark worth making, judges, is that you are far more magnanimous than the politicians. Anyhow you do not repeal the harsh enactments made against the common people,—against those, for instance, who take fees from both parties, or attend the Assembly or sit on a jury while in debt to the treasury, or do anything else forbidden by the laws,—although you know that any man who commits one of these offences may do so because he is poor. You do not enact laws to give liberty of transgression, but rather to take it away. They, on the other hand, make laws to rescue from punishment persons guilty of the most infamous and outrageous misconduct.

The speaker invites the judges to envisage themselves as, through their righteous decisions, steadfastly adhering to principle, unlike politicians. He, thus, creates a sense of self-importance in the minds of the judges: everyone likes to feel that they are doing an important job in a praiseworthy manner and here the judges are invited to feel proud of the decisions they make to preserve justice and to take, therefore, their task of applying the law seriously. This reference, which goes along with Aristotle’s comments about *auxēsis* (amplification) in *Rh.* 1.9.38–40,[30] is designed to make the judges well-disposed to Demosthenes, while, at the same time, reminding them of their duty to vote against political malefactors who introduced inexpedient and illegal laws—in other words to vote against Timocrates.

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30 In rhetoric, *auxēsis* refers to the act and means of extending thoughts or statements to increase rhetorical effect and to add importance. See Lausberg (1998) 118, § 259: “amplification is a graded enhancement of the basic given facts by artistic means, in the interest of the party”; 189–196, §§ 400–409. I thank Edward M. Harris for help on this point.

The second section of Demosthenes 24, from § 162 to § 209, contains more civic than judicial addresses—10 of the former as opposed to 2 judicial addresses. This is the part of the speech where emphasis is placed on the civic dimension of proposing inexpedient laws, especially their harmful impact upon the constitution, the reputation of Athens and her prosperity, which depends upon fair laws. The distinction between these two different sections indicates that the context contributes decisively to the choice of addresses. This conclusion is also verified in § 51, for example, which is notable in containing both a judicial and a civic address.

> Ἔστι μὲν ἔργον, ὦ ἄνδρες δικασταί, εἰ περὶ πάντων τῶν νόμων οἷς οὗτος ἐναντίον εἰσενήνοχεν ἐροῦμεν· ἄξιον δ', εἰ περί του καὶ ἄλλου, καὶ περὶ τοῦδ' ὃν νῦν ἀνέγνω διελθεῖν. ὁ γὰρ τὸν νόμον τοῦτον, ὦ ἄνδρες Ἀθηναῖοι, θεὶς ᾔδει τὴν φιλανθρωπίαν καὶ τὴν πραότητα τὴν ὑμετέραν, καὶ διὰ ταύτην ἑώρα περὶ πολλῶν ὑμᾶς ἑκόντας ἤδη ποτὲ μεγάλα ζημιωθέντας.
>
> It is a long task, judges, if we are to speak of all the laws to which the proposals introduced by the defendant are repugnant; but if any law deserves discussion it is surely that which the clerk has just read. The author of that law knew how kind-hearted and indulgent you Athenians are; he could see that in many instances you had already suffered serious detriment by your own act because of that easy disposition.

We can say that in § 51 the civic address is used when Demosthenes refers to the kind-hearted and indulgent Athenians. The judicial address, meanwhile, is used when he refers to the legal aspect of proposing laws.

4 Conclusion

This chapter has shown how, in the selected passages from Demosthenes 18, 19 and 24, addresses to the audience are not merely a matter of convention. The form, frequency and position of addresses are considered and artful, context-specific and have a cognitive/emotional performative dimension that enables the speaker to influence the judgment of the judges. The civic address creates a grouping to which both speaker and audience belong, implicitly excluding the opponent, as well as any non-Athenian members of the audience. The judicial address has a twofold function. Firstly, it distinguishes between the judges and the audience, as in Demosthenes 18.196. Demosthenes aims to control the judges by instilling fear in them and inviting them to envisage themselves as

being personally accountable to the bystanders. Secondly, the judicial address seeks to invite the judges to take their duty to apply the law seriously and to carry this duty out in the most unbiased way. This is, for example, the purpose of all twelve addresses to the judges in Demosthenes 19 (§§4, 29, 78, 98, 148, 201, 214, 221 (twice), 268, 310, 311).

The striking use of addresses in Demosthenes 24—the fact that there are more judicial than civic addresses in a public speech—also reinforces the contention that the speaker's choice of which address to use in which particular context is not random. The frequent use of judicial addresses seems to be reasonable in a speech where great attention is paid to the process of introducing and passing laws, and to the authority, and the benefits, of certain laws for the *polis*. It can be argued in principle (and especially from §111 to §154) that judicial addresses are used whenever the speaker focuses on legal matters, whereas the civic addresses are used whenever he discusses issues relevant to all Athenians (especially from §162 to §209).

This chapter has sought to show both that it is feasible to reconstruct a general sense of how an orator might use addresses in public speeches to win over the audience, and that this is an important device that has yet to be fully explored by modern scholarship on the ancient Greek orators. In elucidating in some detail the artful use of addresses in Demosthenes 18, 19 and 24, this chapter also establishes a framework within which the use of addresses in private speeches might also be explored. It has been argued that civic addresses are more usual in public than in private speeches, but this raises the question of how to explain the use of civic addresses to the audience in the private speeches 55 and 56 (55.1, 3, 7, 8, 9, 12, 14, 15; 56.37, 44, 47, 48). What can be said about the (performative) purpose of the speaker? Is there any reason, for example, why in speech 55 the civic addresses are used in the first part of the speech (§§1–15) and the judicial addresses in the second (§§16–35)? These open questions indicate that, despite the advances in the study of the Attic oratorical style and technique, more work continues to be needed.

CHAPTER 4

Would I Lie to You? Narrative and Performance in Isaios 6

Brenda Griffith-Williams

Introduction

Athenian inheritance law gave every legitimate son an equal share in his father's estate, without regard to seniority, and excluded illegitimate children. In a society where divorce was easy and remarriage common, there was inevitably rivalry between sons of the same father by different mothers; and informal liaisons were also common, sometimes resulting in the birth of illegitimate offspring. So it was an obvious tactic in a disputed inheritance claim for one party to accuse his opponent of being the illegitimate child of his father's concubine or mistress, not the son of a lawfully married Athenian wife.[1]

This chapter considers the performative aspects of a speech from one such case, Isa. 6, including allusions to the comic stage as well as opportunities for the speaker to engage with the audience and to deploy his vocal and other skills in the delivery of the speech. I intend to focus in particular on a short passage of narrative, §§17–26, which I believe was critical to the speaker's success, but I shall start with some background information about the case.

Formally the estate in dispute is that of Philoktemon of Kephisia, but the property of his father, Euktemon, is also involved. As can be seen from the family tree on p. 56, Euktemon had three sons by his first wife—who, according to Isaios' client, was indeed his only wife. But Euktemon outlived them all, and at the time of his death his only surviving descendants were two daughters, the wife of Phanostratos and the widow of Khaireas, and their respective children. Isaios' client in this case is Euktemon's grandson Khairestratos, the older son of Phanostratos and his wife, who says that Philoktemon left a will adopting him as his son and heir. Khairestratos has submitted a legal claim to the estate, but it was opposed by a kinsman named Androkles,[2] who has testified

1 On the incidence and significance of "amphimetric" disputes in classical Athens: Ogden (1996) 189–199.

2 It is clear from the speech that Androkles was a collateral relative of Euktemon, and probably his next of kin, but their exact relationship is not specified.

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in a *diamarturia*[3] that Euktemon left two legitimate sons by a second wife. Isa. 6 is the prosecution speech from the ensuing prosecution for false testimony (*dikē pseudomarturiōn*). The speech was delivered in the year 365/4 or 364/3 B.C.[4]

If Euktemon did leave legitimate sons by a second wife, then, in accordance with the legal principle of male precedence, his daughters and their children would have no claim at all to his estate. And, unless Khairestratos could prove that Philoktemon had adopted him, Euktemon's sons would also be entitled to claim Philoktemon's estate as his legitimate half-brothers and next of kin. So it was vitally important for Khairestratos, in the interests of his mother and aunt as well as himself, to prove that the two boys put forward by Androkles were *not* legitimate sons of Euktemon. But his opponents have claimed that Euktemon introduced the older of the boys to his phratry, with the agreement of Philoktemon, and Khairestratos is clearly not in a position to deny that. So he has a problem: an Athenian father's introduction of a son to his phratry would have been taken as strong *prima facie* evidence of the child's legitimacy. In modern terms, his position is comparable to that of a man who has registered his child's birth, so that his name appears on the birth certificate as the father, but who later tries to deny paternity. Legally, it is not impossible for him to win, but in practice the odds must be heavily against him.

1 Telling a Persuasive Story: The Speechwriter's Task and the Speaker's Contribution as Performer

If we think of the court as theatre, with the speakers on each side as actors, then the function of an Athenian logographer (speechwriter) was analogous to that of a dramatist, writing a script for the actors/ speakers to perform. (There were no professional advocates in the Athenian system, and each litigant or supporting speaker had to present his own case, even if his speech was "ghostwritten" by a logographer.) Isaios was faced, in the present case, with the task of constructing a persuasive narrative to negate the evidential value of a fact that was highly prejudicial to his client. "Persuasive", in this context, means not just that the story he told had to be plausible, in the sense that the judges would accept

3 A formal statement that the estate was "not subject to adjudication" because of the existence of legitimate sons. The procedural aspects of this case are dealt with in Griffith-Williams (forthcoming).

4 Isaios mentions (§ 14) that fifty-two years have passed since the departure of the Sicilian expedition in the arkhonship of Arimnestos (summer 415).

that it could be true, but that it had to appeal to their moral and cultural values and engage their sympathy for the people involved.[5] That would have been a considerable challenge, given that Euktemon, if the boy he introduced to his phratry was not his legitimate son, must have committed a serious fraud, more likely to alienate the judges than engage their sympathy.

Isaios, who was well known for his expertise in "difficult" inheritance cases, was clearly the right man for the job. After a brief introduction, he devotes the first substantive part of the speech to proving that Philoktemon did leave a valid will adopting Khairestratos as his son. Then he moves on to attack Androkles' claim that Euktemon left two legitimate sons by a second wife. He calls witnesses to testify that Euktemon only ever had one wife, who bore him three sons and two daughters. Next he ridicules the story put forward by Androkles about a Lemnian woman called Kallippe, who was supposedly Euktemon's second wife and the mother of the two boys. The chronology, he says, makes no sense, and Androkles has relied on unsubstantiated assertions: he has produced no witnesses to the alleged marriage, and has refused a challenge to interrogate the domestic slaves who would have known what was going on in Euktemon's household.

All this, we might think, would surely be enough, but by simply refuting Androkles' story, Isaios has not explained who the boys really were or why Euktemon introduced one of them to his phratry if he was not really his legitimate son. So, in §§17–26, he puts forward an alternative story.[6] In summary, he says that Euktemon, in old age, abandoned his family to live with Alke, a slave and former prostitute who managed his tenement-house in the Kerameikos, and who had two young sons (supposedly by Dion, a freedman who had been forced to leave Athens after committing a crime). Under the influence of drugs

5 The importance of this is recognised in the training of modern advocates; cf. Inns of Court School of Law (2006) 97: "Perhaps the most important step is to decide whether the story is acceptable to the listener; does it 'fit' with the listener's idea of how the world and humankind work? Everyone who sits in court to adjudicate on competing versions of the 'facts' in a case brings with them some prior knowledge and beliefs about how things work, what makes people act in certain ways or what they mean when they say certain things. If your client's story fits better into that wealth of knowledge and beliefs than your opponent's story, you have the advantage in persuading the audience to find the facts as you allege them to be".

6 Alternative stories, or "counternarratives", which do not directly address the case made by the opponent but put forward a different version of the facts, are perhaps a more common feature of defence than prosecution speeches in the Athenian courts. Also: Johnstone (1999) 54–60.

or drink, Euktemon became so incapable that Alke was able to persuade him to introduce her older son to his phratry. Two of Euktemon's legitimate sons had already died but the survivor, Philoktemon, objected, and the phratry members refused to admit the boy. Euktemon had a blazing row with Philoktemon, threatening to remarry and father more legitimate sons with whom Philoktemon would have to share his inheritance. After a family conference, Philoktemon acquiesced in the boy's admission to the phratry, on condition that he was to receive only a single farm out of Euktemon's estate.

Stories of family conflict, involving accusations of fraud perpetrated by scheming relatives against the rich and vulnerable elderly, are not uncommon in inheritance disputes.[7] Variations on the theme occur in different geographical and historical settings and there are, inevitably, two sides to such stories.[8] How, then, did Isaios seek to make his version of events more persuasive than his opponent's? Some of the judges may have known about rivalry between half-brothers, or fraudulent attempts to legitimate bastards, from their own families or communities, but the Athenians who served as judges for three obols a day did not come from wealthy families who quarrelled over large estates. They did, however, go to the theatre, and some of the situations and characters described to them in Isaios's speeches may have seemed familiar to them from comedy; although there are no direct parallels in extant plays or fragments, the family quarrel described in Isa. 6 is certainly reminiscent of a comic plot. Formally, as Hall points out, the narratives in forensic speeches often observe something like the dramatic three-actor convention,[9] and there are indeed three main characters in this passage: Euktemon, Alke, and Philoktemon. Euktemon the angry old man and Alke the scheming prostitute seem

7 Another example from classical Athens is the story of Kiron in Isa. 8, whose wife is said to have feigned a series of pregnancies and miscarriages to persuade him that he could still father a son and thus prevent him from adopting his grandson.

8 Also: Friedman (2009) 2: "squabbles over the money and bodies of old people, and over the estates of the dead, are nothing new. They have been around for centuries". Examples cited by Friedman include the nineteenth century dispute over the will of Isaac Banta, in which "testimony on both sides was as different as night and day. One witness argued that Banta was 'perfectly rational', and in fact an 'exceedingly shrewd businessman'. Another … called him 'crazy as a loon' …".

9 Hall (2006) 382: "the narratives in the legal speeches tend to involve no more than three figures in the action being narrated at any one time, even when the case involves a large cast and complicated plot. Holding on to the movements and motives of more than three individuals becomes almost impossible for an auditor, and it is reminiscent of the three-actor convention".

like stock comic characters—the kind of people who belonged, as Hall puts it, to "the virtual community residing in the Athenian imagination".[10]

Just as people nowadays talk about characters from soap operas and sitcoms, Athenian theatregoers would have discussed these characters with their friends and neighbours as if they were real. So their willingness to accept a story they heard in court may have been influenced by what they had seen on stage as much as by their experience of real life, and it is possible that Isaios deliberately shaped his story to meet the theatregoers' expectations. The characters in a forensic narrative cannot speak for themselves, as they would in a drama where they are represented by actors, but the logographer can effectively give them their own voice by presenting aspects of the story from different points of view—or, in narratological terms, changing the focalisation. Such changes of focalisation, as we shall see, have an important function in making the story of Alke and her sons more plausible.

The rhetorical expertise of an Athenian logographer, combined with the performative skills of the speaker, could be crucial to the success of a case. This particular speech was not delivered in court by the litigant, Khairestratos, himself, but by a *sunēgoros* ("supporting speaker") on his behalf. The speaker introduces himself as a close friend of Khairestratos and his father Phanostratos, saying that he has sailed with Khairestratos as a fellow trierarch. We cannot be sure of his identity, but epigraphic evidence suggests that he may have been Aristomenes of Poros,[11] so for the sake of convenience let us call him Aristomenes. Why, though, did he and not Khairestratos deliver the speech? Aristomenes seems to have been older than Khairestratos, but Khairestratos was already old enough to have served as a trierarch, so it is unlikely that he would have been considered too young and inexperienced to present his own case. Aristomenes hints at a possible reason when he says that Euktemon's son-in-law, Phanostratos, will find it painful to hear Euktemon's misfortunes exposed in public, suggesting that it would have been too embarrassing for Khairestratos to tell the story about his own family.[12] There may indeed have been some truth in that, but other Athenian litigants told equally embarrassing stories about their

10 Hall (2006) 19. On the *mala meretrix* as a stock character in Middle Comedy: Nesselrath (1990) 322–323.

11 *I.G.* II^2. 1609. 82, cited by Davies (1971) 564.

12 Rubinstein (2000) 28–29: "Is. 6 was delivered in a *dikē pseudomartyriōn* by a *synēgoros* who acted in support of the plaintiff, Chairestratos (6.1–2). The speaker claims to be a family friend of Chairestratos and his father, and his main function seems to have been to present the judges with an account of the family's misfortune, including details so unsavoury that it would have been highly inappropriate for a family member to bring it to the fore (6.17)".

own families, so we need to look for different reasons. First, as we have seen, there was more at stake in this case than simply Khairestratos' personal claim as Philoktemon's adopted son and heir, so perhaps it was thought that the interests of the family as a whole would be more effectively represented by a close family friend. But I also think it is possible—although it must be emphasised that this is purely speculation—that Aristomenes may have been chosen, in consultation between Isaios and members of the family, because of his superior skills as a forensic speaker.

Performance, in oratory as in drama, is transient, based on the interaction between a live speaker or actor and audience as well as on the more permanent (though variable) script produced by the speechwriter or dramatist. We have no video or audio recording, or eye witness account, of Aristomenes' performance at the trial in which he spoke for Khairestratos, so we can only make some speculative attempts to reconstruct it on the basis of the script that Isaios provided for him. Throughout this speech, Isaios takes great care to establish a rapport between Aristomenes and the judges, and the speaker-audience dynamics are particularly important in §§17–26, where he tells the story of Alke and her sons. In the detailed analysis which follows of this section of the speech, my aim is to show how he does this not only through his own linguistic and rhetorical skills but also by allusions to the theatre and by providing opportunities for Aristomenes to enhance the impact of the words he speaks by using performative techniques such as gesture, facial expression and variations in tone of voice.

2 The Story of Alke and Her Sons[13]

Sections 17–18:

> (17) … ἐγὼ δ' ὑμῖν ἐπιδείξω καὶ ὅθεν εἰσὶ και οἵτινες οὓς γνησίους διεμαρτύρησαν εἶναι καὶ κληρονόμους ζητοῦσι καταστῆσαι τῶν Εὐκτήμονος. Ἴσως μέν ἐστιν ἀηδὲς Φανοστράτῳ, ὦ ἄνδρες, τὰς Εὐκτήμονος συμφορὰς φανερὰς καθεστάναι ὀλίγα δ' ἀναγκαῖον ῥηθῆναι, ἵν' ὑμεῖς τὴν ἀλήθειαν εἰδότες ῥᾷον τὰ δίκαια ψηφίσησθε. (18) Εὐκτήμων μὲν γὰρ ἐβίω ἔτη ἓξ καὶ ἐνενήκοντα, τούτου δὲ τοῦ χρόνου τὸν μὲν πλεῖστον ἐδόκειεὐδαίμων εἶναι—καὶ γὰρ οὐσία ἦν οὐκ ὀλίγη αὐτῷ καὶ παῖδες καὶ γυνή, καὶ τἆλλ' ἐπιεικῶς ηὐτύχει—ἐπὶ γήρως δὲ

13 The text of §§17–26 used here is that of the Loeb edition (Forster, 1927). The translation is based on that of Edwards (2007), with some modifications.

αὐτῷ συμφορὰ ἐγένετο οὐ μικρά, ἣ ἐκείνου πᾶσαν τὴν οἰκίαν ἐλυμήνατο καὶ χρήματα πολλὰ διώλεσε καὶ αὐτὸν τοῖς οἰκειοτάτοις εἰς διαφορὰν κατέστησεν. …

But I will show you who these men are and where they're from, whom my opponents have declared to be legitimate and are seeking to establish as heirs to Euktemon's property. It is perhaps distasteful to Phanostratos, gentlemen, to make Euktemon's misfortunes manifest, but a few things must be said, so that knowing the truth you may more easily vote for what's just. (18) Euktemon lived till he was ninety-six, and for most of this time he seemed to be quite happy—he had a considerable fortune, children and a wife, and in other respects fared reasonably well. But in his old age a great misfortune befell himthat ruined his entire household, cost him a great deal of money, and set him at odds with his closest relatives.

The story is very carefully set up, with an introduction at §§17–18 which reads almost like the proem to a separate speech within the speech. In §17, Aristomenes uses the second person pronounto address the judges in both the dative ("I will show you who these men are") and the nominative ("so that knowing the truth you may more easily vote for what's just"). In apologising for a story that will embarrass Phanostratos, he interpolates the vocative address ὦ ἄνδρες: "It is perhaps distasteful to Phanostratos, gentlemen …". These direct addresses draw the judges into his argument and invite them to sympathise with Phanostratos—one might almost say Aristomenes is taking them into his confidence.[14] Then, like many another forensic speaker, he emphasises that he wants the judges to know the truth. What he is saying, in effect, is "I would not tell you all these painful things if I did not absolutely have to", which seems to imply that the more embarrassing a story is, the more likely it is to be true. That, of course, is illogical, but it may have had some persuasive force with the audience. It will certainly have kept them on the alert, expecting to hear some juicy revelations.

It is worth asking what Phanostratos was doing at this point. We know he was present in court, because Aristomenes refers to him using the deictic pronoun

14 Cf. Denommé (1974) 136: "Ce contact avec les juges, ou avec la partie adverse, Isée l'établit de façon beaucoup plus directe par l'apostrophe. Tantôt, il s'adresse aux juges en usant des formes conventionelles: ὦ ἄνδρες est utilisé en 143 occasions … En fait, ces apostrophes ne se bornent pas à solliciter discrètement l'attention des membres du tribunal; elles veulent aussi les associer intimement à l'argumentation de l'orateur".

οὑτοσί (with, presumably, an appropriate gesture to indicate "Phanostratos here") at §6. It seems significant that he does not use οὑτοσί at §17. Did he, this time, deliberately avoid turning towards Phanostratos in order to spare his blushes? Or did Phanostratos quietly—or perhaps not so quietly—slip out of the court, overcome with emotion and unable to listen any more? We cannot know, of course, but there are certainly theatrical possibilities here. And we must not forget that the opposing speakers were not the only actors in an Athenian court drama: each party would have had his own supporters in court, and in this case we know that Khairestratos and his brother, as well as their father Phanostratos, were present. Given the apparently expected level of audience participation in Athenian trials, it is unlikely that they would have kept quiet.[15]

Section 18, continuing the build-up to the narrative, seems to have a function similar to that of a dramatic prologue: setting the scene, and whetting the audience's appetite for the action to come, but without giving away the details of the story. The emphasis on Euktemon's reversal of fortune, which perhaps gives the story something of a tragic flavour,[16] plays down Euktemon's agency in the episode, making him the passive victim of a disaster rather than the active perpetrator of a fraud.

Sections 19–21:

> (19) Ὅθεν δὲ καὶ ὅπως ταῦτ' ἐγένετο, ὡς ἂν δύνωμαι διὰ βραχυτάτων δηλώσω. Ἀπελευθέρα ἦν αὐτοῦ, ὦ ἄνδρες, ἣ ἐναυκλήρει συνοικίαν ἐν Πειραιεῖ ἀυτοῦ καὶ παιδίσκας ἔτρεφε. Τούτων μίαν ἐκτήσατο ᾗ ὄνομα ἦν Ἀλκή, ἣν καὶ ὑμῶν οἶμαι πολλοὺς εἰδέναι. Αὕτη δὲ ἡ Ἀλκὴ ὠνηθεῖσα πολλὰ μὲν ἔτη καθῆστο ἐν οἰκήματι, ἤδη δὲ πρεσβυτέρα οὖσα ἀπὸ μὲν τοῦ οἰκήματος ἀνίσταται, (20) διαιτωμένη δὲ αὐτῇ ἐν τῇ συνοικίᾳ συνῆν ἄνθρωπος ἀπελεύθερος—Δίων ὄνομα αὐτῷ—ἐξ οὗ ἔφη ἐκείνη τούτους γεγονέναι καὶ ἔθρεψεν αὐτοὺς ὁ Δίων ὡς ὄντας ἑαυτοῦ. Χρόνῳ δὲ ὕστερον ὁ μὲν Δίων ζημίαν εἰργασμένος καὶ δείσας ὑπὲρ αὐτοῦ

15 See, e.g., Lanni (1997). The scope for "audience participation" is more limited in a modern trial, where noisy or disruptive behaviour is unlikely to be tolerated by the judge. One hears, nevertheless, of criminal trials where the victim's family express their disapproval of the defendant, or where the defendant's loved ones sit quietly weeping while he gives evidence. It would be disingenous to think that none of this ever had any effect on the jurors, despite the judge's instructions to set their emotions aside in reaching their verdicts.

16 Cf. Usher (1999) 151: "… by seeming to look at events from the old man's point of view, [Isaios] is able to impart an attractive tragic flavour to the story".

ὑπεχώρησεν εἰς Σικυῶνα· τὴν δ' ἄνθρωπον ταύτην, τὴν Ἀλκήν, καθίστησιν Εὐκτήμων ἐπιμελεῖσθαι τῆς ἐν Κεραμεικῷ συνοικίας, τῆς παρὰ τὴν πυλίδα, οὗ ὁ οἶνος ὤνιος. (21) κατοικισθεῖσα δ' ἐνταυθοῖ πολλῶν καὶ κακῶν ἦρξεν, ὦ ἄνδρες. φοιτῶν γὰρ ὁ Εἰκτήμων ἐπὶ τὸ ἐνοίκιον ἑκάστοτε, τὰ πολλὰ διέτριβεν ἐν τῇ συνοικίᾳ, ἐνίοτε δὲ καὶ ἐσιτεῖτο μετὰ τῆς ἀνθρώπου, καταλιπὼν καὶ τὴν γυναῖκα καὶ τοὺς παῖδας καὶ τὴν οἰκίαν ἣν ᾤκει. χαλεπῶς δὲ φερούσης τῆς γυναικὸς καὶ τῶν ὑέων οὐχ ὅπως ἐπαύσατο, ἀλλὰ τελευτῶν παντελῶς διῃτᾶτο ἐκεῖ καὶ οὕτω διετέθη εἴθ' ὑπὸ φαρμάκων εἴθ' ὑπὸ νόσου εἴθ ὑπ' ἄλλου τινός, ὥστε ἐπείσθη ὑπ' αὐτῆς τὸν πρεσβύτερον τοῖν παίδοιν εἰσαγαγειν εἰς τοὺς φράτερας ἐπὶ τῷ αὑτοῦ ὀνόματι.

(19) How and where this started I will show you as briefly as I can. He had a freedwoman, gentlemen, who managed an apartment block of his in Peiraeus and kept prostitutes. One of those she acquired was named Alke, and I think many of you know her. After her purchase this Alke lived in the brothel for many years but retired from the professon when she became too old. (20) While she was living in the brothel, a freedman by the name of Dion slept with her, and she said he was the father of these boys; and Dion did indeed bring them up as his own children. Some time later Dion committed a crime and fearing for himself departed for Sikyon; and Euktemon set up this woman Alke as manager of his apartment block in Kerameikos, near the back gate where wine is on sale. (21) Once established there, she originated many evils, gentlemen. Euktemon regularly went there for the rent and would spend much of his time in the apartment block; sometimes he even dined with the woman, abandoning his wife and children and the house he lived in. Despite the protests of his wife and sons, he not only did not stop going there but in the end he lived there completely, and he was reduced to such a state either by drugs or disease or something else that she persuaded him to introduce the older of the two boys to his phratry under his own name.

In the first sentence of § 19 the address to the judges, ὦ ἄνδρες, is a formal marker for the beginning of a new passage of narrative; then Aristomenes draws the judges more intimately into the story when he introduces Alke, one of the prostitutes, by appealing to their own experience with the comment "and I think many of you know her". This, of course, is something that could never have been said about a respectable Athenian woman, and we may imagine that it was accompanied by an appropriate gesture or facial expression—and that it provoked a reaction from the audience. Whether or not they did know Alke

personally, they may have been reminded of representations of real-life *hetairai* on the comic stage.[17]

Sections 20 and 21 continue the narrative, with another address at the beginning of § 21 to attract the judges' attention at a critical point. The wording used later in this section continues to play down Euktemon's culpability, implying that he was not legally responsible for his actions: "he was reduced to such a stateeither by drugs or disease or something else that she persuaded him". The judges would have recognised the allusion to Solon's law about wills: a will is not valid if the testator's mind is impaired "by lunacy or drugs or disease or old age", or if he is acting under the influence of a woman.[18]

Section 22:

> (22) Ἐπειδὴ δὲ οὔθ' ὁ ὑὸς αὐτῷ Φιλοκτήμων συνεχώρει οὔθ' οἱ φράτερες εἰσεδέξαντο, ἀλλ' ἀπηνέχθη τὸ κούρειον, ὀργιζόμενος ὁ Εὐκτήμων τῷ ὑεῖ καὶ ἐπηρεάζειν βουλόμενος ἐγγυᾶται γυναῖκα Δημοκράτους τοῦ Ἀφιδναίου ἀδελφήν, ὡς ἐκ ταύτης παῖδας ἀποφανῶν καὶ εἰσποιήσων εἰς τὸν οἶκον, εἰ μὴ συγχωροίη τοῦτον ἐᾶν εἰσαχθῆναι.
>
> But when his son Philoktemon would not agree to this and the members of his phratry would not admit the boy, and the sacrificial victim was removed from the altar, Euktemon was angry with his son and wanted to insult him. So he became engaged to a sister of Demokrates of Aphidna, with the intention of recognising her children and bringing them into his family, unless Philoktemon agreed to allow this boy to be introduced.

An intriguing element in the story is the reference to Demokrates of Aphidna, whose sister Euktemon threatened to marry in order to produce more children after his first, unsuccessful attempt to introduce Alke's son to his phratry. Euktemon becomes the focaliser here, when he is "angry" with Philoktemon

17 Cf. Nesselrath (1997) 278: "in Middle Comedy, the *hetairai* mentioned and sometimes described in no little detail are very often figures from real contemporary life about whom theatregoers could hear often when they gossiped in the streets and whose services they might even be able to enjoy (if they had enough money to pay for them)".

18 [D.] 46.14: "Anyone who had not been adopted, so that he could neither renounce nor claim [an inheritance], when Solon took office, may dispose of his property as he wishes, provided he has no legitimate sons and is not mentally incapable through madness, old age, drugs or illness, or under the influence of a woman or acting under compulsion or deprived of his liberty". Transl. Arnaoutoglou (1998) 1.

and "insults" him with his plan to remarry. Isaios, of course, cannot possibly have known what was in Euktemon's mind, but he makes the story more persuasive by 'dramatising' it in this way.

Given that Euktemon was apparently still married to Philoktemon's mother, his plans to remarry have caused some difficulty for commentators, leading to theories about "lawful bigamy" or "legitimate concubinage", or to the suggestion that Euktemon must have divorced his first wife, a fact suppressed by Isaios because it would have been damaging to his client.[19] But I would suggest that we need not take the supposed betrothal quite so seriously; indeed, it may have been its very absurdity that was intended to strike the audience. We are dealing, after all, with a story about a demented old man, so we need not assume that his actions were rational, or even necessarily legal. But was there something special about Demokrates of Aphidna? He is known to us from Aeschines and Hyperides as a politician of the anti-Macedon faction with a reputation for wit.[20] He is thought to have been born towards the end of the fifth century, so he may already have been a public figure by the late 360s, when Isa. 6 was delivered. If so, the reference to him as Euktemon's intended brother-in-law must have been calculated to provoke a reaction of some kind—whether it was one of sympathy, hostility, or perhaps amusement.

Sections 23–24:

> (23) Εἰδότες δ' οἱ ἀναγκαῖοι ὅτι ἐξ ἐκείνου μὲν οὐκ ἂν ἔτι γένοιντο παῖδες ταύτην τὴν ἡλικίαν ἔχοντος, φανήσοιντο δ' ἄλλῳ τινὶ τρόπῳ, καὶ ἐκ τούτων ἔσοιντο ἔτι μείζους διαφοραί, ἔπειθον, ὦ ἄνδρες, τὸν Φιλοκτήμονα ἐᾶσαι εἰσαγαγεῖν τοῦτον τὸν παῖδα ἐφ' οἷς ἐζήτει ὁ Εὐκτήμων, χωρίον ἓν δόντα. (24)Καὶ ὁ Φιλοκτήμων, αἰσχυνόμενος μὲν ἐπὶ τῇ τοῦ πατρὸς ἀνοίᾳ, ἀπορῶν δ' ὅ τι χρήσαιτο τῷ παρόντι κακῷ, οὐκ ἀντέλεγεν οὐδέν. Ὁμολογηθέντων δὲ τούτων καὶ εἰσαχθέντος τοῦ παιδὸς ἐπὶ τούτοις, ἀπηλλάγη τῆς γυναικὸς ὁ Εὐκτήμων καὶ ἐπεδείξατο ὅτι οὐ παίδων ἕνεκα ἐγάμει, ἀλλ' ἵνα τοῦτον εἰσαγάγοι.
>
> His relatives, knowing that he would not have any more children at his time of life, but that they would appear in some other way and as a result there would be still greater disputes, persuaded Philoktemon, gentlemen, to allow the introduction of this boy on the terms that Euktemon sought,

19 Harrison (1968) 15–17 rightly discredits earlier theories that Athenian law permitted bigamy.

20 Aeschin. 2.17; Hyp. 2.3–4.

> giving him a single plot of land. (24) And Philoktemon, ashamed at his father's folly but at a loss how to cope with the problem he faced, made no objection. But when this agreement was made and the child was introduced on these terms, Euktemon got rid of the woman, showing that he had not been planning to marry to produce children but to introduce this child.

The story reaches another critical point at § 23, when Philoktemon gives in and allows Euktemon to introduce Alke's son to his phratry, albeit on special terms. In doing so, he became complicit in Euktemon's fraud, and, unlike his father, he could not be excused on the grounds of old age or feebleness of mind. The focalisation shifts at the beginning of this section from Euktemon himself to his wider family circle, who persuaded Philoktemon to let Euktemon do what he wanted in order to avoid more serious family quarrels. So these unnamed family members are made to bear the responsibility for Philoktemon's change of mind, and they seem to function like a dramatic chorus, commenting on and in this case endorsing the protagonist's actions. Here, again, the address to the judges (they "persuaded Philoktemon, gentlemen") does more than merely emphasise a point; it invites the judges to set aside any disapproval of Philoktemon and share his point of view—if they had been in his position they, like him, would have been persuaded.

It is worth noting at this point that Isaios' preferred mode of address to the judges is ὦ ἄνδρες ("gentlemen"), not ὦ ἄνδρες δικασταί ("judges") which is more frequently used by the other Attic orators.[21] Whereas ὦ ἄνδρες δικασταί emphasises the specifically judicial functions of the judges, placing them in a position of power over the litigant, ὦ ἄνδρες implies a relationship of equality between speaker and addressees, so it is particularly appropriate when a litigant is appealing to their shared experience or emotions as fellow men.

Philoktemon takes over as focaliser at the beginning of § 24, where the motivation attributed to him invites sympathy: he was "ashamed at his father's folly but at a loss how to cope with the problem he faced". Using the technique known by narratologists as "presentation through negation", Isaios avoids making a positive statement that Philoktemon agreed to the introduction of his supposed half-brother to the phratry. The wording "made no objection"

21 Isaios uses ὦ ἄνδρες 143 times (of which eighteen in Isa. 6), and ὦ ἄνδρες δικασταί five times, in his eleven speeches from inheritance cases. The latter is the only mode of address used in Isa. 12, a substantial fragment of a speech from a case of disputed citizenship, where it occurs fourteen times. On addresses to the judges in the Attic orators generally: Dickey (1996) 177–180, and Serafim's chapter in this volume.

(οὐκ ἀντέλεγεν οὐδέν—literally "said nothing against") falls a long way short of indicating wholehearted agreement, and continues to underline Philoktemon's reluctant collusion.

Sections 25–26:

> (25) Τί γὰρ ἔδει αὐτὸν γαμεῖν, ὦ Ανδρόκλεις, εἴ περ οἵδε ἦσαν ἐξ αὐτοῦ καὶ γυναικὸς ἀστῆς, ὡς σὺ μεμαρτύρηκας; τίς γὰρ ἂν γνησίους ὄντας οἷος τε ἦν κωλῦσαι εἰσαγαγεῖν; ἢ διὰ τί ἐπὶ ρητοῖς αὐτὸν εἰσήγαγε, τοῦ νόμου κελεύοντος ἅπαντας τοὺς γνησίους ἰσομοίρους εἶναι τῶν πατρῴων; (26) Ἢ διὰ τί τὸν μὲν πρεσβύτερον τοῖν παῖδοιν ἐπὶ ῥητοῖς εἰσήγαγε, τοῦ δε νεωτέρου ἤδη γεγονότος οὐδὲ λόγον ἐποιεῖτο ζῶντος Φιλοκτήμονος οὔτε πρὸς αὐτὸν ἐκεῖνον οὔτε πρὸς τοὺς οἰκείους; οὓς σὺ νῦν διαρρήδην μεμαρτύρηκας γνησίους εἶναι καὶ κληρονόμους τῶν Εὐκτήμονος. ταῦτα τοίνυν ὡς ἀληθῆ λέγω, ἀναγίγνωσκε τὰς μαρτυρίας.
>
> For why did he need to marry, Androkles, if these were his children by an Athenian woman as you have testified? Who could have prevented him from introducing them if they were legitimate? And why did he introduce him on special terms, when the law prescribes that all legitimate sons have an equal share in their patrimony? (26) And why did he introduce the older of the two boys on special terms but not say a word about the younger one while Philoktemon was alive, even though he was already born, either to Philoktemon himself or to his relatives? Yet you have now expressly testified that they are legitimate heirs to Euktemon's property. To prove I am telling the truth in this, read the depositions.

The best opportunity for Aristomenes to show off his performative skills comes at § 25, when he turns towards the defendant, Androkles, and addresses him by name. Direct address to the opponent, or apostrophe, is a rhetorical device used quite frequently by some of the Attic orators, including Demosthenes, but in Isaios' speeches it is relatively rare, and he tends to use it, as here, to create a strongly dramatic effect. Aristomenes fires off a series of four rhetorical questions, which create the illusion of a dialogue with his opponent, simultaneously summarising his own argument and reducing the position of Androkles to absurdity. Isaios could have made the same points with statements in the indicative instead of questions: "Euktemon had no need to marry if these were his children by an Athenian woman. No one could have prevented him from introducing them if they were legitimate; and there was no need to introduce him on special terms, when the law gives all legitimate sons an equal share in

their patrimony. And he never said a word to anyone about the younger boy while Philoktemon was alive". But a series of bald statements would hardly have engaged the judges and stirred their emotions in the way that the contemptuous questions were clearly designed to do. The passage concludes when Aristomenes turns away from Androkles to address the clerk of the court. In an echo of §17, he introduces witness testimony with a standard formula which invites the judges to accept that his story is true.

3 Conclusion

The end of this passage marks the climax, but not the conclusion, of the speech as a whole. The narrative continues with Philoktemon's death, the making and revocation of Euktemon's will, the conspiracy between Alke and Androkles to defraud him of his property, and their outrageous behaviour after his death, when they stripped his house of its contents and prevented his wife and household servants from getting in. The speech concludes with a lengthy denunciation of Androkles' illegal activities and an attack on the character of Alke, who, according to Aristomenes, had insulted the entire *polis*, as well as Euktemon's family, by attending the Thesmophoria in violation of the law restricting that privilege to citizen women.

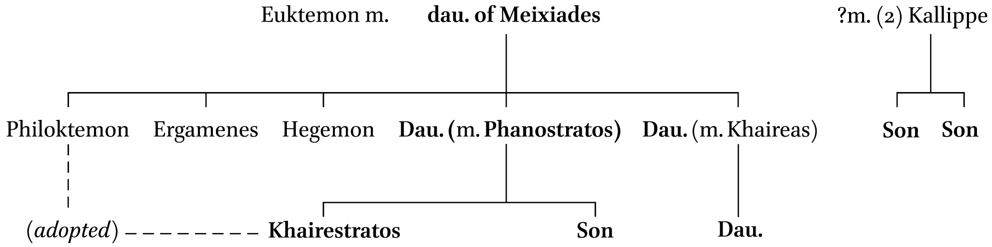
We do not know the outcome of the trial,[22] and we cannot hope to recover the truth behind the disputed "facts"; but when we read the speech in print, with time to pause for reflection, and to check back on details that we may have overlooked at first, we may not find the story entirely convincing. Even if we are persuaded that Euktemon was not responsible for his own actions when he introduced his younger "son" to his phratry, we may wonder how exactly Alke came to be associated with Androkles in the plot to rob him. (Isaios merely reports, very perfunctorily, at §29, that Androkles and his associate Antidoros "fell under the influence of the woman"—ὑποπεπτωκότες οἵδε τῇ ἀνθρώπῳ). When we read, at §55, that Philoktemon regarded Androkles as his worst enemy because of his participation in the plot against Euktemon, we may

22 Thompson (1970) argues that an inscription dated to the mid-fourth century or later (*I.G.* II^2 2825.11), which identifies Khairestratos as the son of Phanostratos and not of Philoktemon, proves that Khairestratos "lost his case". (Cf. Edwards (2007) 100.) But even if the inscription is correctly dated later than the speech, it does not necessarily prove that Androkles won the *dikē pseudomarturiōn*. Another possibility is that Khairestratos won but Androkles successfully reopened the litigation at a later date. Alternatively, Khairestratos may have been successful, but later returned to the *oikos* of his natural father Phanostratos, leaving behind a son of his own as heir to Philoktemon.

be surprised by Philoktemon's knowledge of a conspiracy which, as we were told earlier, did not start until after his death. Reflecting on the speech as a whole, we may suspect that the story of Alke and her sons, and her conspiracy with Androkles, may have been an elaborate smokescreen designed to distract attention from the flimsiness of Isaios' evidence about Philoktemon's adoption of Khairestratos.

The judges who tried the case, unlike us, had the advantage of hearing both sides. They also knew more than we do about fourth century Athenian life and values, and at least some of them may have had personal knowledge of the family involved in the dispute. But they heard—and saw—only one performance of the speech, and with no opportunity to confer before they voted, they will not have had much time for critical analysis. If they believed the explanation of Euktemon's introducing Alke's son to his phratry, they probably accepted the rest of the story without asking too many questions. Whether they did believe it will have depended on whether Isaios and Aristomenes succeeded in persuading them to identify with Philoktemon and overlook the irregularity of his and Euktemon's behaviour.

An Athenian trial was a competition between opposing litigants, won by the side that put forward the more persuasive version of events. A successful collaboration between the logographer and speaker might persuade the judges to accept a case that was factually or legally weak, but even a true story might need some embellishment to improve its chances of success. So, however sceptical we may feel, we should not necessarily conclude that Isaios' story was not true. But of course we cannot be sure, and neither could the judges. As they, like all Athenians, were well aware, only the gods know the truth.



The family of Euktemon of Kephisia

Notes

1. People shown in **bold** were living at the time of Isaios 6.
2. The speaker's opponent, **Androkles**, was a collateral kinsman of Euktemon, but their relationshis is not specified.
3. The 'sons' of Euktemon and Kallippe are said by the speaker of Isaios 6 to be the sons of Alke and Dion.

CHAPTER 5

The Orator and the Ghosts: Performing the Past in Fourth-Century Athens

Guy Westwood

Quintilian tells us that impersonating people put particular physical demands on the ancient orator,[1] and it is no surprise that *eidōlopoeia*—the act of impersonation of a dead individual[2]—looks (on the basis of our evidence) to be something relatively rarely deployed. It was worth attempting, though, both as a means of generating *pathos* to help win a case by inviting the audience to consider the virtues and values of a figure or figures no longer alive, usually in contrast with those of an opponent, and also as a validation of a speaker's credibility as a public performer—if successfully managed. Cicero's conjuring up of the venerable and unassailably eminent Appius Claudius Caecus in *pro Caelio* (56 B.C.) to shame his descendant Clodia must be the best-known example;[3] Quintilian says that Cicero put on a special voice to play Appius, which he then varied for the impersonation of Clodius that followed.[4]

Eidōlopoeia has a fairly consistent meaning in ancient rhetorical theory,[5] and is most frequently placed in some sort of relationship with *prosōpopoeia*:

1 Quint. *Inst.* 2.1.2 (with Reinhardt and Winterbottom (2006), 42; they compare 11.3.136; see also 3.8.49 and 9.2.33); cf. Cicero's own comments: *Orat.* 85.

2 Aphth. *Prog.* 11; [Hermog.] *Prog.* 20 Kennedy; cf. Priscian. *Praeex.* 9 (*simulacri factio*).

3 Cic. *Cael.* 33–34.

4 Quint. *Inst.* 11.1.39–41.

5 As opposed to philosophy (which I do not discuss here: Longin. 15.1, linking *eidōlopoeia* with *phantasia*, seems to be drawing his understanding of the term partly from this side: see Russell (1964) 120). A broad consensus accepts a distinction between *ēthopoiia* (cf. *sermocinatio*) or *prosōpopoeia* (cf. *fictio personae*) as an umbrella term: for more on the choices here see Lausberg (1998), §§ 820–829 and De Temmerman (2010), 34–36)—note in particular that Quint. *Inst.* 9.2.31 subsumes *sermocinatio* under *prosōpopoeia*. The speech of dead individuals tends to belong under *prosōpopoeia*, along with personified abstractions. Some writers (Quint. *Inst.* esp. 3.8.52–54, 9.2.31; Demetr. *Eloc.* 265–266; Theon, *Prog.* 115; Nicol. *Pr.* 65 Kennedy; Aps. *Rhet.* 10.5 Dilts-Kennedy) do not distinguish *eidōlopoeia* from *prosōpopoeia* "proper" specifically; some do (see n. 2). On *enargeia* and *ekphrasis*, which are relevant to these categories, see esp. Webb (2009b); in Aeschines particularly: (2009a); and in Demosthenes 18 and 19 now Serafim (2015) 96–108.

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therefore there is the regular expectation that the conjured dead figure should be given at least some direct speech, however much (or little) the orator may choose to do to individualise them.[6] Embedded direct speech voiced by secondary individuals in general is quite common both in Cicero and the Athenian orators;[7] but the situation is different with the speaking "ghosts" covered by *eidōlopoeia*. Cicero's *pro Caelio* passage seems to be an outstanding example of a wider phenomenon (if still sparingly deployed) in Roman oratorical contexts;[8] but by contrast, we find no *eidōlopoeia*—no speaking ghosts—in extant Classical Athenian oratory.[9] Why? And what do we find instead?

A helpful way of framing the issue will be to think in terms of the distinction between "direct/sensory" and "cognitive/emotional" performative techniques coined and examined by Serafim in his monograph, *Attic Oratory and Performance*.[10] We see Athenian orators deploy the first type of technique hardly at all when presenting figures from the past—indeed, on the single occasion where we can be semi-confident that an orator used physical *mimēsis* to evoke a historical figure, this was specifically targeted by his opponent later.[11] But the orators do deploy the second type, and to striking effect, constructing set pieces aimed at emotive engagement with audience members' conceptions

6 The writers in n. 5 tend to assume that direct speech will be employed in *prosōpopoeia*, but one of Apsines' examples (the personified *kairos* in D. 1.2) uses *oratio obliqua* (cf. the perhaps better-known D. 18.172), and Rutil. 2.6 even has a "second type" of *prosōpopoeia* which embraces abstractions using *oratio obliqua*.

7 Some Demosthenic examples: absent individuals: 19.22, 194–195, 320, 324; abstracted subsets of the present audience: 13.12; 21.153. Present specific individuals: Aeschines' series of speeches in Demosthenes' voice (e.g. Aeschin. 2.37, 43, 112; 3.166–167, 209, 211). See Trevett (1995) more generally. Cicero's standout example of a speaking abstraction is probably Patria in *Catil.* 1.18, 27–29), and of a present specific speaker probably Milo in *Mil.* esp. 93–94, 98.

8 Cicero assumes in his theoretical texts that it will get used: *Brut.* 322; *De or.* 1.245, 3.205; *Part.* 55; *Top.* 45; *Orat.* 85. Though we have no direct parallels for the Appius moment, three examples suggest wider deployment of the technique (given by Dufallo (2007) 28): i) Cicero's own conjuring up of Scaurus the Elder in *Scaur.* 49–50 (cf. Quint. *Inst.* 4.1.69 for his use of *prosōpopoeia* in the other *Pro Scauro*, on which see Crawford (1984) 198–201; ii) Helvius Mancia's address to Pompey, a sort of "auto-*eidōlopoeia*" (ORF^4 71 = V. Max. 6.2.8); iii) a speech made by Vatia Isauricus before Metellus Nepos in which the eminent consular "nearly raised all the Metelli from the dead": Cic. *Sest.* 130–131; cf. *Red. Sen.* 25–26; *Prov. Cons.* 22.

9 With the quasi-exception Pl. *Mx.* 246d–248d (see below).

10 Serafim (2017).

11 Aeschin. 1.25 and D. 19.252 (see below, main text).

of the civic and moral values which the figures presented could be shown to embody, and using the techniques which belong in ancient theory under the rubrics of *ēthopoiia* and *enargeia* to do so.[12] Orators can, for example, encourage audiences to "imagine that they see" a given individual, and do so in contexts where the encouragement operates as part of a persuasive nexus where audience members are also being prompted to more direct emotional reactions to the speaker's target. Channelling those emotions and mediations of positive values through a single famous historical figure (or a small number) focuses and economises the rhetorical process, creating a direct, personalised connection with members of the audience in the present, via their shared and individual cultural understandings of those great figures. In effect, then, this chapter explores an area where orators can be found privileging cognitive/emotional techniques of performance despite the attractiveness and potential persuasive dividends of direct/sensory ones, and makes some suggestions as to why they might have made this choice. I begin by surveying the techniques on show.

The absence of more active personal physicalisation of famous individuals may initially seem surprising in a culture where the institution of the funeral oration encouraged constant, active reflection on the influence of the dead on the living and percolated into other types of oratory in various ways. We do frequently find Athenian orators, especially in lawcourt contexts, invoking their ancestors as binding witness of events in the present (and usually coopting them to the argument of the speaker).[13] Furthermore, in D. 23 (352 B.C.) there is a moment (210) where the speaker briefly vocalises (οἴμοι) the horror that the dead would feel if they could see Charidemus receiving the special award which the speaker is opposing. But otherwise, although we see orators evoke and conjure up figures from the Athenian past to help persuade their audiences, none of these individuals breaks into speech (and some orators do not even go this far). The most dynamic and creative deployer of such passages is Aeschines, the main focus of what follows, and his background as an actor must up to a point explain his willingness to compose passages which he knew he could deliver and interpret skilfully. Demosthenes' constantly expressed fear of Aeschines' powerful delivery neatly attests to the effect which he could expect to command as an oratorical performer.[14]

12 See above n. 5.

13 e.g. Lys. 12.100; And. 1.148; Isoc. 14.61; 5.105, 137; 6.110; D. 19.66; 20.87; 23.210; also Antiph. 1.3.10.

14 Kindstrand (1982) 18–22; Easterling (1999); Gotteland (2006); Hall (2006) 372–373; Hernández Muñoz (2006). Demosthenes' fear: for example D. 19.255, 336; 18.280, 308–309.

Another reason why Aeschines comes so close is precisely the competitive intensity and high-stakes nature of his oratorical interaction with Demosthenes, from the point of (as far as we can tell) first clash in the trial of Timarchus in 346/5 B.C. Not only that: the set of extant speeches indicate that this particular oratorical rivalry involved a fiercely competitive attitude to the authoritative handling of the Athenian past—who had a right to cite it, and how.[15] This came to the fore particularly in the Embassy trial of 343 B.C., where Demosthenes claimed (among many other things) that Aeschines had argued for peace with Philip by encouraging the Athenians to ignore speakers appealing to the traditional *topoi* of Athenian greatness—Marathon, Salamis, and so forth—articles of faith in the national past as far as audiences would have been concerned.[16] In his defence speech, Aeschines carefully addresses these allegations,[17] and in doing so cements a link between responsible oratorical use of the past and being a good statesman. In the lawcourt engagements between Demosthenes and Aeschines, then, we should expect performative techniques which involved evoking historical individuals to feature naturally among the areas of contestation.

On being confronted with the two Aeschinean set pieces I examine below, it is telling that Demosthenes goes out of his way to attempt to counter their effect, seeking not only to demolish the arguments to which they contribute, but to undermine the basis of Aeschines' reference to them in the first place. That reflects the fact that the individuals conjured up in these two passages are specifically ones with whom Aeschines wishes to identify himself: he aims to map himself onto them, and allow them to help him perform to his audience the nature of his own contribution and character as a public figure. Demosthenes could not leave these uncontested, not least because his own strategies involved assimilation of himself to a range of eminent historical Athenians, expressed by and large in less theatrical ways.[18] The combination of Aeschines' investment in his "ghosts" and their importance for his own self-presentation meant both that he took greater risks when evoking them and that Demos-

15 As explored by Clarke (2008) 252–261, and by Hesk (2012) 219–226.

16 D. 19.16, 307; see e.g. Nouhaud (1982) 147–164 for oratory, and Efstathiou (2013) 184–190 on the use of Marathon in this trial; for comparison with comedy, see most recently Carey (2013) and Papadodima (2013) 148–154 (on Marathon).

17 Especially Aeschin. 2.74–77; for a view of Aeschines' strategy, see Steinbock (2013).

18 And not just Pericles (as argued by Yunis (1996) 268–277, Mader (2007); qualified by Gotteland (2010) 36–41). We need to remember that Demosthenes mentions Pericles only once (3.21). He apparently finds Themistocles more interesting: D. 13.21–22, 29; 20.73–74; 18.204; 23.196–198, 205, 207 (also singled out by Clarke (2008) 254).

thenes made special efforts to "exorcise" them. In a sense, Aeschines can be thought of as making even more interesting use of his "ghosts" than Cicero: he may not let them speak, but Cicero's Appius and Scaurus function purely as discrete *exempla*: they seem to play their argumentative role, entertain the audience, and then leave. The easy manner in which Cicero moves on from the Appius impersonation suggests that he is not interested in meaningful or sustained self-association with him (36: *sin autem urbanius me agere mavis, sic agam tecum: removebo illum senem durum ac paene agrestem* … "You may, on the other hand, prefer me to deal with you in a smart, modern way; if so, this is what I shall do. I shall get rid of that harsh and almost rustic old man …" [tr. Berry]).[19] Aeschines' chosen "ghosts", however, function as part of a set of broader self-fashioning manoeuvres aimed at the wider arousal of emotions to be concentrated negatively upon Demosthenes, and these figures' significance from the audience's point of view is key for communicating Aeschines' ideal self-image. The feud with Demosthenes offers an important example, then, of how the use of cognitive/emotional techniques of oratorical performance could function as persuasive weapons—as instruments of wider political competition—and I move now to examine the two set pieces themselves.

In the first part of the *epilogos* of *Against Ctesiphon*, the text which represents his prosecution speech in the Crown trial of 330 B.C., Aeschines harnesses the resources of the broad sweep of Athenian history to expose Demosthenes' whole political career as a disaster for Athens (257–259):

> ὅταν δ' ἐπὶ τελευτῆς ἤδη τοῦ λόγου συνηγόρους τοὺς κοινωνοὺς αὐτῷ τῶν δωροδοκημάτων παρακαλῇ, ὑπολαμβάνετε ὁρᾶν ἐπὶ τοῦ βήματος, οὗ νῦν ἑστηκὼς ἐγὼ λέγω, ἀντιπαρατεταγμένους πρὸς τὴν τούτων ἀσέλγειαν τοὺς τῆς πόλεως εὐεργέτας, Σόλωνα μὲν τὸν καλλίστοις νόμοις κοσμήσαντα τὴν δημοκρατίαν, ἄνδρα φιλόσοφον καὶ νομοθέτην ἀγαθόν, σωφρόνως, ὡς προσῆκον αὐτῷ, δεόμενον ὑμῶν μηδενὶ τρόπῳ τοὺς Δημοσθένους λόγους περὶ πλείονος ποιήσασθαι τῶν ὅρκων καὶ τῶν νόμων, [258] Ἀριστείδην δὲ τὸν τοὺς φόρους τάξαντα τοῖς Ἕλλησιν, οὗ τελευτήσαντος τὰς θυγατέρας ἐξέδωκεν ὁ δῆμος, σχετλιάζοντα ἐπὶ τῷ τῆς δικαιοσύνης προπηλακισμῷ, καὶ ἐπερωτῶντα εἰ οὐκ αἰσχύνεσθε, εἰ οἱ μὲν πατέρες ὑμῶν Ἄρθμιον τὸν Ζελείτην κομίσαντα εἰς τὴν Ἑλλάδα τὸ ἐκ Μήδων χρυσίον, ἐπιδημήσαντα εἰς τὴν πόλιν, πρόξενον ὄντα τοῦ δήμου τοῦ Ἀθηναίων,

19 He is there first and foremost because he is of the *gens Claudia*, not to reflect on Cicero particularly: van der Blom (2010) 95. The Appius episode is certainly at some level comic (Geffcken (1973) esp. 17–23; Vasaly (1993) 175–176; Gaffney (1995) 427–429), but Appius himself, and his ethical message, remain serious in their purport (Osgood (2005); Dufallo (2007) 22–23).

παρ᾿ οὐδὲν μὲν ἦλθον ἀποκτεῖναι, ἐξεκήρυξαν δ᾿ ἐκ τῆς πόλεως καὶ ἐξ ἁπάσης ἧς ἄρχουσιν Ἀθηναῖοι, [259] ὑμεῖς δὲ Δημοσθένην, οὐ κομίσαντα τὸ ἐκ Μήδων χρυσίον, ἀλλὰ δωροδοκήσαντα καὶ ἔτι καὶ νῦν κεκτημένον, χρυσῷ στεφάνῳ μέλλετε στεφανοῦν. Θεμιστοκλέα δὲ καὶ τοὺς ἐν Μαραθῶνι τελευτήσαντας καὶ τοὺς ἐν Πλαταιαῖς καὶ αὐτοὺς τοὺς τάφους τοὺς τῶν προγόνων οὐκ οἴεσθε στενάξειν, εἰ ὁ μετὰ τῶν βαρβάρων ὁμολογῶν τοῖς Ἕλλησιν ἀντιπράττειν στεφανωθήσεται;

And when, just near the end of his speech, he calls on his partners in corruption to speak in support, imagine that you see on the platform where I now stand as I speak the city's benefactors ranged against their impudence. See Solon, who equipped the democracy with the most noble laws, a philosopher and a worthy legislator, urging you in the restrained manner that befits him under no circumstances to set more value on Demosthenes' arguments than on your oaths and the laws. [258] See Aristides, who set the tribute for the Greeks, on whose death the people gave his daughters dowries, expressing his anger at the insult to justice and asking if you are not ashamed that, when Arthmius of Zelea brought gold to Greece from the Medes and visited the city, your fathers came close to killing him, even though he was representative of the people of Athens, and barred him by proclamation from our city and every city ruled by Athens, [259] but you are proposing to give a golden crown to Demosthenes, who did not bring gold from the Medes but took bribes from them and still has the money even now. Do you not think Themistocles and the men who died at Marathon and Plataea and the very graves of our ancestors will groan aloud, if a man who admits to plotting with the barbarians against the Greeks receives a crown?

tr. CAREY

This tableau of condemnation—much of it expressed in one long periodic sentence—seems consciously to appropriate the *topos* of the dead as binding witness and show how powerful it can become with the addition of only a small number of vivid details. In terms of the oratorical rivalry between Demosthenes and Aeschines, it seeks to confirm Aeschines' authoritative command of Athenian history by co-opting the most venerable of all its inhabitants—Solon and Aristides being the only great Athenians whose greatness (consisting especially in moral stature in their case) is never qualified in extant oratory[20]—

20 Solon's influence is circumscribed, though not seriously, at D. 24.211. [D.] 26.6 is probably spurious.

as proxies for Aeschines himself, as a way of channelling and clarifying the emotional response (moral outrage) he wants the audience to feel. It is no accident that he had, earlier in the speech (107–129), constructed a dramatic account of how he roused the Amphictyons at Delphi to punish Locrian cultivators of the sacred Cirrhaean plain (thus precipitating the Fourth Sacred War) which made explicit reference to how Solon had taken the same role in recommending the punishment of their Crisaean predecessors, thus precipitating the First (108). In a climate where Aeschines and Demosthenes both wanted to affirm control over the historical examples they cited, and to use their historical figures to assist in their own political self-construction, Aeschines' bid to embody Solon's and Aristides' values directly in front of the audience was a communicative manoeuvre which Demosthenes could not afford to ignore.

In his defence (which *On the Crown* represents), then, Demosthenes needed to surpass Aeschines' passage in order to reassert control of the interpretation of the great men of the past, but also because it was a dramatic set piece that needed upstaging anyway, and sufficiently near the end of Aeschines' speech that its effect had to be neutralised.[21] Aeschines may have conserved his performative resources to "go all out" on this *epilogos* section; certainly Demosthenes saw the need in *On the Crown* (18.127) to tear apart the final paragraph itself, which directly follows (3.260), criticising Aeschines' histrionic delivery of it (ὥσπερ ἐν τραγῳδίᾳ βοῶντα, "bawling out as in a tragic play") as well as his expression (ἐπαχθεῖς λόγους, "pompous phrases"). To negate Aeschines' tableau's persuasive effect, Demosthenes adopts the famous 'paradoxical argument' (199–210): that it would have been right for the Athenians to oppose Philip at Chaeronea even had they known in advance that they would be defeated. His strategy had been signposted by the way in which he had encouraged his audience, earlier in the speech (169–180),[22] to visualise the Assembly meeting at which Philip's surprise capture of Elatea had been reported formally, and at which Demosthenes had taken charge—an account apparently constructed to resemble and upstage Aeschines' account of his role at Del-

21 This would assume even greater importance in the disseminated version, where readers could pass straight from *Against Ctesiphon* to *On the Crown* without the live obstacle of Ctesiphon's own (presumably brief) defence.

22 It is possible that the Elatea passage was added or embellished in post-trial revision for circulation, but that does not seriously affect the point that Demosthenes would wish to negate the effect of Aeschines' passage. For a close examination of the ekphrastic qualities of the passage, see Serafim (2015) 99–105.

phi.[23] Now, in the "paradoxical argument", Demosthenes embeds a famous oath which vindicates the Athenian opposition to Philip, and which is sworn explicitly by the dead of the Persian Wars, directly addressing Aeschines' *epilogos* and turning it in a new direction (208):

> ἀλλ' οὐκ ἔστιν, οὐκ ἔστιν ὅπως ἡμάρτετε, ἄνδρες Ἀθηναῖοι, τὸν ὑπὲρ τῆς ἁπάντων ἐλευθερίας καὶ σωτηρίας κίνδυνον ἀράμενοι, μὰ τοὺς Μαραθῶνι προκινδυνεύσαντας τῶν προγόνων, καὶ τοὺς ἐν Πλαταιαῖς παραταξαμένους, καὶ τοὺς ἐν Σαλαμῖνι ναυμαχήσαντας καὶ τοὺς ἐπ' Ἀρτεμισίῳ, καὶ πολλοὺς ἑτέρους τοὺς ἐν τοῖς δημοσίοις μνήμασι κειμένους ἀγαθοὺς ἄνδρας …
>
> But you cannot, you cannot have been wrong, men of Athens, when you took upon yourselves the peril of war for the freedom and salvation of all! I swear it by those ancestors of yours who faced the dangers at Marathon, and those who stood in the battle-line at Plataea, by those who fought in the sea-battles at Salamis and Artemisium, and by those many others who lie in the public tombs, brave men …
>
> tr. USHER

Unlike Aeschines (with στενάξειν, 3.259), Demosthenes does not allow his chosen dead to break silence—he only asks his audience to think of them lying in their tombs (κειμένους). Attention remains compellingly focused on the living: on Demosthenes himself, both as the authoritative performer who will mediate vocally to the audience the passionate exhortation to a true verdict that the dead cannot, and also as author (or co-author) of the policy that led to defeat at Chaeronea, and on the role of the citizen audience in validating it eight years earlier. One of Demosthenes' many persuasive achievements in this speech is simultaneously to vindicate the policy that led to Chaeronea and to dismiss the relevance to the trial of anything but Athens's present and the characters of the two major agonists in the trial, conceived as the sum of their careers to date.[24] His success also resides in his ability to take back control of a key conduit of ethical communication with the audience—the

23 Some important points of contrast Demosthenes constructs are: his own dignity (18.172) versus Aeschines' confessed intemperateness (Aeschin. 3.117); the united and pragmatic response of the Athenians (D. 18.179) versus the rash, emotional and half-thought-through response of the Amphictyons (Aeschin. 3.121–122); the dramatic use of light and dark accompanying the gatherings (D. 18.169 vs. Aeschin. 3.123); and Demosthenes' elevated and symbolic use of the herald (18.170) versus Aeschines' matter-of-fact use (3.122).

24 On this see e.g. Yunis (2000); (2001) 284–287 on D. 18.314–320.

past—and to do so in ways that specifically draw audience attention to that recapture.

Aeschines' creativity in the *epilogos* of *Against Ctesiphon*, then, reflects the oratorical stakes of the Crown trial—hence his strenuous forging of a spatial (and by extension an ethical) bond with Solon and Aristides. Although he envisages Solon and Aristides rising as nightmare *synegoroi* at the end of Demosthenes' defence speech (ἐπὶ τελευτῆς ἤδη τοῦ λόγου), it would be hard for audiences to avoid imagining them there on the *bēma* with Aeschines, their conjurer, now—he says explicitly that they occupy the same space (οὗ νῦν ἑστηκὼς ἐγὼ λέγω). The audience are being invited directly to view Aeschines as the closest thing to Solon and Aristides—*qua* outstanding citizens—that can be imagined in this setting. A similar view can be taken of Aeschines' entreaty to the judges to "imagine that they see" (ὑπολαμβάνετε ὁρᾶν). This is part of a wider oratorical tendency to encourage active visualisation, and one which, as Hobden and Webb have recently shown with reference to *enargeia*, Aeschines makes use of a good deal.[25] Here, though, responding to the challenge that having Demosthenes as an opponent presented and to the need to land a decisive blow in the *epilogos*—where emotive effects were *de rigueur* anyway[26]—he goes much further.

This is an extreme example of *enargeia* which poses a cognitive challenge to the judges to see something other than the individual before them, a transfiguration which comes straight from the theatrical stage, most familiarly from tragedy but also from comedy, and which need not always involve "ghosts".[27] Unlike Cicero in the *pro Caelio*—adopting the persona of Appius as just one of a series—Aeschines remains 'in character' throughout, sustaining the *ēthos* he has arrogated to himself by invoking Solon, Aristides, and the others to assist him. Indeed, he comes close to allowing these figures to speak through him, furnishing a rare extra level: while the conjured Aristides stays locked in Aeschines' *oratio obliqua*, he does use his own *paradeigma*—Arthmius of Zelea—just as any orator, including Aeschines himself, would. Arthmius' canonicity as a *paradeigma* for orators to use underlines that,[28] but it is almost certainly relevant here that Demosthenes had used Arthmius as a specific negative comparand for Aeschines in their previous major lawcourt encounter, the

25 Hobden (2007); Webb (2009a).

26 Arist. *Rh.* 3.19, 1419b–1420b; *Rh. Her.* 2.47–50; Cic. *Inv.* 1.98–109; *De or.* 2.311, 332; Quint. *Inst.* 4.1.28, 6. *pr.* and 1–2; Aps. *Rh.* 10.5. See also Winterbottom (2004) 219–230 and Leigh (2004).

27 As with Aeschylus' Clytemnestra: *Ag.* 1497–1504.

28 Nouhaud (1982) 239–242.

Embassy trial.[29] Furthermore, the Arthmius episode also seems to belong to the period of Aristides' political influence,[30] such that when Aristides the "ghost" uses this *paradeigma* in this 330 trial, he does so with more than usual cogency. Why, then, do other orators—at least on the evidence we have—not choose to go as far as Aeschines? And why does the very singular Aristides "*paradeigma* within a *paradeigma*" seem to be the furthest Aeschines can go towards full impersonation, at least in *Against Ctesiphon*?

Audience ambivalence or wariness about this family of techniques must, at some level, be a key factor. An Athenian orator wishing to win a case might well present arguments designed to challenge or even shock listeners, but would hardly mediate those arguments via performative techniques unlikely to win their approval. Moreover, the degree to which individual audience members would be comfortable with the idea of allowing a good piece of oratorical "acting" to affect their judgment in the case at hand would also vary.[31] There may, ultimately, have been the expectation that direct impersonation of the dead simply belonged in the theatre. We are certainly right, in the wake of an important 1995 article by Hall, to think that audiences would apply to oratorical contexts the cognitive frames developed in their (in many ways) isomorphic experience of theatre;[32] and we probably need to countenance more meaningful connections than have previously been canvassed between orators' conjuring up of figures like Solon, Aristides, and Themistocles, and Old Comedy's raising, for example, of Solon, Miltiades, Aristides, and Pericles in Eupolis' *Demes* (described by Aphthonius as just as much an *eidōlopoeia* as an oratorical one[33]), of the dead Solon (at least) in Cratinus' *Cheirones*,[34] and possibly of Phormion in Eupolis' *Taxiarchs*,[35] where we know he certainly featured;[36] and the overlap in the choice of individuals summoned up by (among others)

29 D. 19.271–272; cf. 9.41–46.

30 For the date, e.g. Meiggs (1972) 511–512; Famerie (1992) 193–194 n. 10. Colin (1933) 244–247 preferred the early 450s, after Aristides' death.

31 Ar. *V.* 579–580 imagines judges only acquitting the (?) tragic actor Oeagrus after he has delivered his best speech from (Aeschylus'?) *Niobe*.

32 Hall (1995) 39–58; this also appeared in revised form as Hall (2006). See also Ober and Strauss (1990). On the orator as actor in passages of *ekphrasis* in declamation: Webb (2009b) 175–177.

33 Aphth. *Prog.* 11; see Storey (2003) 115.

34 Fr. 246 K-A and Bakola (2010) 23.

35 Storey (2003) 247 (though 246–260 *passim*) 369; (2011), II.210–211.

36 Ar. *Pax* 348 e, and Fr. 268 K-A; also an Attic *oinochoe* of c. 410: e.g. Csapo (2010) 28–29; (2014) 106–107.

Aeschines in *Against Ctesiphon* and by those fifth-century comic poets respectively is suggestive in itself. But even leaving aside the question of how far ghost-raising persisted as a comic device in the fourth century (and allowing for re-performance and reading), audiences could simply have expected (or at least have been prepared) to conceive of the great men of their past quite differently in different venues. I would also suggest that the reticence extant public oratory tends to show about filling in too fully the details of great past leaders' characters (as opposed to what their deeds indicated) responds precisely to an expectation that audience members would rely—and perhaps *enjoy* relying—on their own perceptions of the figure in question, derived from the whole spectrum of everyday experience of the civic past, to fill in orators' references and produce a variety of personalised meanings. The emotive use to which orators can put such figures certainly implies that they expected such hinterlands of reference to be available, and anticipated being able to engage with them for their own purposes. Orators' individual attempts to arrogate to themselves the characteristics of historical great men, and their efforts to use them as embodiments of the values deemed at stake in the situation, were probably sufficiently open to audience criticism as well as opponents' contestation in themselves that they would be unlikely to want to give these historical characters voices too.

Aeschines and others, then, will have made their choices with the dangers of *over*-performance in mind. A set of performative risks and opportunities not dissimilar to those governing *eidōlopoeia* was offered by quoting passages of poetry,[37] which we find in Aeschines, Demosthenes, and Lycurgus—these might present the chance to "act out" the passage if there was a specific speaker to personify.[38] It is perhaps telling, then, that Aeschines, partly in order not to be seen to capitalise on the use of his famous voice,[39] apparently delegates most of his (copious) poetic quotation in *Against Timarchus* to the court clerk to recite; in *Against Ctesiphon*, however, where he quotes poetry only twice,[40] he recites it himself. Moreover, Demosthenes would hardly have bothered complaining about Aeschines' use of his actor's training if he did not expect that point to resonate: it belongs in the same category as attacks on an opponent's

37 On these risks see e.g. Ober and Strauss (1990) 245–246, 250–253; Ford (1999) esp. 249–256; Hanink (2014) 136–137.

38 Wilson (1996) 312.

39 cf. Olding (2007) 161. (Olding argues that Aeschines does so to fix his rhetorically important variations on the text of Homer as authoritative, like laws and decrees.) Aeschines does give the audience at least one treat (1.144).

40 Aeschin. 3.135, 184–185. The *manteia* at 3.112 are read by the clerk.

sophistic education, wealth, aristocratic origins and so on—external resources which could be spun as undemocratic and capable of prejudicing the contest in one combatant's favour.[41] Impersonating a great historical Athenian (the common property of the *polis*) in a speech might easily be drawn under the same rubric of undemocratic behaviour: constantly articulated in oratorical texts is the assumption that a speaker should stage his integrity by relying only on his own record as a good Athenian citizen to persuade. This may be the reason why examples of the *epitaphios logos*—described explicitly by Thucydides and implicitly by Demosthenes as only delivered by men of outstanding reputation[42]—do not go any further towards Appius-style *eidōlopoeia* than Aeschines in *Against Ctesiphon*. One example that edges close but ultimately falls short is Hyperides' description in his *Funeral Oration* of the welcome given to Leosthenes in the underworld by the great past heroes: although the scene is vivid, none of the participants is given direct speech.[43] Plato's decision to include an *eidōlopoeia* of the fathers of the present generation in his *Mx*. 246d–248d is therefore intriguing, but the clearly parodic nature of the embedded *epitaphios logos* to which it belongs suggests that it cannot be used safely as an example; if anything, it may offer a further indication that direct speech by dead individuals was normally off-limits.

To explain why Aeschines, and Hyperides in the *Funeral Oration*, still go as far as they do, we need to consider another type of contextual dimension, beyond the Demosthenes-Aeschines feud (which, however much it may explain Aeschines' creativity in *Against Ctesiphon*, did not directly involve Hyperides). An argument made by Dufallo (with Cicero's Appius in view) that different examples of literary *prosōpopoeia* reflect and dramatise how the author perceives his socio-political context and his place within it[44] corresponds interestingly to a major theme in recent scholarship on the Lycurgan era, spearheaded on the epigraphic side by Lambert,[45] which identifies "past-connectivity" as basic to Lycurgus' political programme and characteristic of Athenian civic activity in the period of his ascendancy more generally.[46] This, he and others argue, manifests itself (among many other things) in the

41 On this group, see above all Ober (1989) esp. 156–191, 219–226, 279–289; Ober and Strauss (1990) 250–255.

42 Th. 2.34.6; D. 18.285–288.

43 Hyp. 6.35, 39. For the peculiar heroising of Leosthenes see e.g. Herrman (2009) 21–23, 102–106; Hesk (2013) 52–60, 63–64.

44 Dufallo (2007) 13–14.

45 Lambert (2010); (2011); (2012).

46 See e.g. Azoulay (2009); (2011); and the essays in Azoulay and Ismard (2011); Hesk (2012).

enhanced volume and richness of and interest in historical material found in oratory, and Hanink has recently demonstrated the similar trajectory of contemporaneous oratorical interest in quoting tragedy.[47] While the sophistication at least of both Demosthenes' and Aeschines' use of the past (like their quotation of tragedy[48]) pre-dates the Lycurgan era, there is certainly an increase in volume,[49] and the speeches which unite the historical and the theatrical most explicitly—Demosthenes 18, Aeschines 3, Lycurgus 1 and Hyperides 6—do all fall in the period after Chaeronea. In rhetorical terms we could say that what we see is a cleaving closer to the models of historical and mythical discourse more familiar from epideictic and diplomatic oratory like Hyperides' *Deliacus* (of 343) than from symbouleutic or dicanic—orators are prepared to bring historical material before their audiences in greater quantity and with greater attention to its literary fashioning and possible persuasive effect. So it is easy to see why, in a climate of increased attention to the skilful harnessing of vivid appeals to the past, we might see orators attempting bolder performative manoeuvres.

Equally, the very choice of resurrected statesmen—Solon, Aristides, Themistocles and the men of Marathon and Plataea in the Aeschines example—would express precisely the kind of cultural appetite for linkage with the inviolate period prior to the Peloponnesian War that would correspond both to Dufallo's conception of *prosōpopoeia* (as articulating the concerns of a "historical moment") and to scholarly attention to the new concern for past-connectivity in oratory of the Lycurgan period. After all, Solon, Aristides, Themistocles, Miltiades, Cimon, and Pericles were chosen in different combinations of four by Eupolis and Plato (and thus Aelius Aristides and other Imperial-era orators, and indeed the fourth-century orators themselves) precisely because they could be felt to embody a whole cultural climate.[50] Comparable imaginative efforts in this period include two sections of Lycurgus' own *Against Leocrates*. More elaborate and more specific than the usual judge-binding witness *topos*, though clearly growing out of it, is an appeal (136–137) centred on Leocrates' father, via a statue of him in the temple of Zeus Soter, which Leocrates abandoned in his flight from the city. The *epilogos* (150), rousing the cityscape against Aeschines, is a fine piece of *enargeia* verging on standard *prosōpopoeia* (or, with

47 Hanink (2014) esp. 29–59, 133–158.

48 Hanink (2014) 92–100, 133–143.

49 On the increase, see Hesk (2012) 214–215, with n. 22.

50 Eup. *Demes* (*Dēmoi*): Storey (2003) 111–174, esp. 131–133, and on the choice of Themistocles and Pericles, Braun (2000); Pl. *Grg.* 503c, 515d; Ael. Ar. 3 (*To Plato: In Defense of the Four*), *passim*, but see esp. 3.365, linking to Eupolis' play (though not by name): Storey (2003) 36.

the tombs, *eidōlopoeia*),[51] though further back from the line than Aeschines' in *Against Ctesiphon* because no person-on-person assimilation is possible. As for Demosthenes, we could say that *On the Crown* not only responds in kind to Aeschines' decision to maintain the relationship between the correct use of history and positive self-presentation more generally that had served the feuding pair well since the Embassy trial, but also represents a product consistent with Lycurgus' cultural project in emphasising the didactic properties contained in the vision of the Athenian past that Demosthenes uses to explain defeat, not least in the "paradoxical argument".

But there were plenty of ways to respond to the new emphasis on past-connectivity, and not all orators seem to have been as dextrous (or as consistently dextrous) as one another in how they let that emphasis inform what they composed. Equally, not all orators may have been as "performatively-minded"—i.e. alert to creative possibilities, or keen to experiment—as one another. Some orators may have used *eidōlopoeia* passages but performed them in a neutral way, as a medium for the expression of values without explicit relation at the same time to a speech section's emotional texture. To what extent the past was actively brought on stage in public oratory depended above all on the immediate trial or Assembly context, the imaginations of individual orators, and their estimation of what they felt they could perform effectively in context. The way that Lycurgus handles his copious historical and mythical material in *Against Leocrates* is instructive here: the two instances mentioned above are (at least judging from the text) the only moments where any compelling, synaesthetic performative manoeuvres are attempted. This seems surprising, given that Lycurgus was clearly a confident performer, who we find, for example, leaving none of his poetic quotations in this speech to the clerk.[52] But the high-stakes competitive needs governing Aeschines' decisions for the peroration in *Against Ctesiphon*, for example, were simply not present in this case; Lycurgus did not have to take risks. So individual calculations based on personal expertise (and tied to fulfilling or creatively frustrating audience expectations), and on personal need in a specific trial con-

51 On this passage see Hobden (2007) 500–501.

52 Azoulay (2009) 166–170; Hall (2006) 367; Hanink (2014) 36. Reciting in person allowed Lycurgus to associate himself more clearly with the moral teaching he is offering via these passages (cf. Lycurg. 1.102) than recitation by the clerk (with its effect of assimilating poetic quotations to other types of depersonalised deposited evidence: Wilson (1996) 312; Olding (2007) 162–167) would normally allow. It is impossible to know how far he impersonated his speakers. He may not have wanted anything to distract listeners from the moral lessons, and, unlike Aeschines, he had no acting background.

text, must be paramount; broader contextual factors cannot explain everything.

It is in fact fairly clear that (as far as Aeschines and Demosthenes go) the increased past-connectivity of the Lycurgan era simply moved seasoned practitioners to more advanced versions of what they were doing already. Aeschines can illustrate this too. The vivid language of "imagining" on which he relies in the *epilogos* of *Against Ctesiphon* exemplifies what is actually a distinctive tendency in his oratory already: in *On the Embassy*, for example, he seeks to generate sympathy in his audience by visualising his mother worrying about him as he stands defending himself (148). Even more important here is my second sample passage, from Aeschines' *Against Timarchus* of 346/5 B.C., which shows that it does not take a trial where there is a contextual need to discuss the Athenian past for orators to bring figures from that past onto the stage in imaginative ways. Nor is this instance from a peroration. It is the evocation of Solon standing as orator in Aeschin. 1.25, designed to demonstrate the modest oratorical *habitus* of politicians of earlier times (Pericles, Themistocles, and Aristides are also mentioned) to contrast with the shameful behaviour allegedly displayed by Timarchus. The motivations present and the emotional response sought match Cicero's when introducing Appius in *pro Caelio*. All that is lacking is speech. What actually happens is that Aeschines stakes everything on a physical representation of Solon's oratorical posture, based on the posture of the statue of Solon in the agora at Salamis:

> εὖ γὰρ οἶδ' ὅτι πάντες ἐκπεπλεύκατε εἰς Σαλαμῖνα καὶ τεθεωρήκατε τὴν Σόλωνος εἰκόνα, καὶ αὐτοὶ μαρτυρήσαιτ' ἂν ὅτι ἐν τῇ ἀγορᾷ τῇ Σαλαμινίων ἀνάκειται ὁ Σόλων ἐντὸς τὴν χεῖρα ἔχων. τοῦτ' ἔστιν, ὦ ἄνδρες Ἀθηναῖοι, ὑπόμνημα καὶ μίμημα τοῦ Σόλωνος σχήματος, ὃν τρόπον ἔχων αὐτὸς διελέγετο τῷ δήμῳ τῶν Ἀθηναίων.
>
> I am certain that you have all sailed to Salamis and have viewed the statue of Solon, and you yourselves could bear witness that Solon stands in the Agora on Salamis with his hand inside his robe. This, men of Athens, is a representation and a reminder of the posture that Solon in person used to adopt when he spoke to the Athenian people.
>
> tr. CAREY

The moment is well known from Demosthenes' demolition of it in 343, in 19.251–257: he even calculates the time period (with notable exactness) to show how unlikely the statue was to represent the postures Solon actually adopted (251). Crucially, Demosthenes tells us that Aeschines imitated the posture dur-

ing his speech (τοῦτο μὲν τοίνυν εἶπεν τοῖς δικασταῖς καὶ ἐμιμήσατο, 252), and this may well be the moment indicated.[53] If it is, Aeschines' ambiguous τοῦτ' ἔστιν neatly collapses the difference between his own posture and that of the statue of Solon. Again, it looks probable that "casting oneself" in a visible way as a famous historical figure—a very overtly direct/sensory technique—was more likely to attract criticism and retaliation than integrating that figure into one's argumentation less vividly.

Demosthenes also introduces his quotation of the Solonian elegiac verses by commenting that Aeschines "has put a cap on his head and is going around abusing" him (255: ἂν πιλίδιον λαβὼν ἐπὶ τὴν κεφαλὴν περινοστῇς καὶ ἐμοὶ λοιδορῇ). Solon had supposedly worn a felt cap, a *pilidion*—traditionally associated with invalids or lunatics—while delivering his famous Salamis elegy,[54] and it is a Salaminian statue of Solon that is in point. As in *Against Ctesiphon*, the figure of Solon as a touchstone of civic morality is important to Aeschines as an example throughout *Against Timarchus*, not just at the moment of active imitation (25),[55] so Demosthenes may therefore be taking the opportunity to destabilise that now by suggesting (correctly or not) that Aeschines has been using the *pilidion* as a way of identifying himself with Solon: λαβών suggests that Aeschines has just been 'dressing up' for the role, and did not actually need the *pilidion*. Aeschines had been ill in mid-346—Demosthenes denounces that illness as a sham elsewhere in *On the False Embassy*[56]—and may have been again; he may have worn a *pilidion* at some point while convalescing. This is made especially likely if Aeschines' complaint was in fact a head ulcer.[57] This may, then, be a callous but shrewd move by Demosthenes, alert to how Aeschines could be represented as attempting to fashion himself through performative manoeuvres involving great Athenians. All he needed for his barb to stick was

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53 It is possible that Demosthenes distorts what Aeschines did two years earlier. But Aeschines' use of Solon here must have been distinctive and memorable—otherwise there would be no need to target it.

54 Plu. *Sol.* 8.2; see MacDowell (2000) 311 for interpretations.

55 See e.g. Bouchet (2008) 282–287.

56 Demosthenes on Aeschines' "illness": 19.124–126. Aeschines on his own illness: 2.94–95. Rationalisation: Harris (1995) 167–168.

57 A fragmentary inscription (*IG* IV^2.1 255) from Epidaurus, relocated by Peek in 1961 (Peek (1962) 1003), seems to have borne what we know as 6.330 in the *Palatine Anthology*, an epigram purporting to be by Aeschines (who does tell us he wrote poetry: 1.135–136) thanking Asclepius for curing a head ulcer. There is no very strong reason to doubt the identification or the authenticity, supported by the first editor, Herzog (1931) 39–40, by Forbes (1967), and by the most recent editor, Girone (1998) 42–45; also by Wickkiser (2008) 59. Irigoin (1976) 121–123 expressed clear reservations but was disinclined to call it a forgery.

for the audience to remember Aeschines wearing a *pilidion* like Solon's traditional *pilidion* at some point in the not-too-distant past. He did not even need them to remember Aeschines' emphasis on Solon in the Timarchus trial—but he reminds them, to be on the safe side. They may not in fact have needed reminding, though: it is clear from *On the Embassy* that Aeschines expects them to remember the moral basis of his prosecution of Timarchus (180). This nexus from *Against Timarchus*—invocation of Solon as an exemplar, plus personal evocation of him in posture and possibly costume too—put a historical figure on stage with a kind of compelling theatricality that Demosthenes, when responding to the speech two years later in *On the False Embassy*, was strategically obliged to challenge.

Two suggestions follow, then. First, it must be possible that the orators had no particular need of the voice effects that all-out *pro Caelio*-style *eidōlopoeia* would bring: costume and gesture were among the things already available to do the work of impersonation for them if they chose. Second, the advanced character of the imaginative choices Aeschines makes in *Against Timarchus* and *Against Ctesiphon* is fundamentally a function of his personal strategy—the natural response of a skilled actor to an environment where many were trying to fashion themselves as authoritative exponents of the Athenian past in front of popular audiences. Trying to prove anything from the results of trials is a dangerous game, but the result of the Timarchus trial, and Aeschines' readiness to remind the audience of his success in *On the Embassy*, suggest his overall self-characterisation worked.

No extant Athenian orator, ultimately, makes use of *eidōlopoeia* as the theoretical tradition later understood it in an Assembly or court speech, but comparable creative manoeuvres reliant on cognitive techniques—prompting audience members to identify emotively with the figures being presented—were nonetheless possible within the following boundaries. Essential was the need to sustain self-presentational transparency as an honest Athenian citizen; casting oneself via direct/sensory techniques as someone else, especially a canonical figure identifiable with the democracy at large, was fraught with risk and encouraged contestation, and was to be approached only by those who could handle the consequences or those engaged in contests which demanded virtuoso creativity (as with Aeschines and Demosthenes). Key also was confidence and training. Quintilian's remark about the physical demands of a good *prosōpopoeia* is worth taking seriously. The technique might easily backfire, leaving the speaker looking ridiculous. We get a flavour of this in the way Demosthenes jumps at the chance to criticise the steps in this direction that Aeschines takes. It meant also that even among the most practised speakers, it was rare. Working in their favour, though, was a particular historical

context. The low ebb of national pride after Chaeronea and the background of past-connective Lycurgan reform meant the political stakes for successful deployment of one's vision of the Athenian past—the better days—were even higher than before, hence Aeschines' readiness in 330 to continue his feud with Demosthenes on lines which valorised the persuasive use of the past. It is in the Crown trial, therefore (and not the earlier Embassy trial), in a context where interpreting the recent historical journey not only of one statesman but an entire *polis* was at issue, that Aeschines' and Demosthenes' great men of the past come closest to breaking into speech.

CHAPTER 6

Speech without Limits: Defining Informality in Republican Oratory*

Catherine Steel

Introduction

The dramatic nature of Roman forensic activity is well attested.[1] Cicero's practice shows how extensively dramatic plots, characters and language could be used in court when the circumstances of a case made them strategically advantageous; and his theoretical works, and those of his successors, demonstrate the close links which could be drawn between oratorical delivery and the technical framework of acting. Research on the dramatic aspects of Roman oratory has tended to concentrate on the orator himself, the speeches which he delivered and his gestures and manner of speaking. To this extent, it has bought into the fiction, so carefully created in the surviving texts of oratory, that forensic speech is under the control of the speaker. But the impression of Roman court practice given by Cicero's surviving forensic speeches is profoundly misleading. They offer a single unbroken text, in which the orator speaks without interruption for one often very considerable period of time. Reality was very different. Orators built their cases from a combination of their own words and those elicited from the witnesses they summoned. They drew on the presence of the defendant and his supporters, even if the defendant did not in fact speak. And they were faced by the responses of the audiences, both the formal constituted jury who would judge the case, and those who chose to listen by standing within earshot of the court proceedings.

In this chapter, I explore the informal exchanges that took place within and around Republican courts. Through the term "informal" I seek to bring together a range of occasions which are connected to, but distinct from, the orator's prepared words in the form of a continuous speech. Some of these exchanges, such

* This chapter arises from research conducted during the European Research Council funded project *The Fragments of Republican Roman Oratory*. I am grateful to Andreas Serafim, Sophia Papaioannou and Beatrice da Vela for their invitation to contribute to this volume.

1 Geffcken (1973); Axer (1980); Harries (2007) 129–147; Bablitz (2007).

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as those with defendant and witnesses, were integral to court practice, and consequently could be prepared for and, to a certain extent, managed. Others were much more unpredictable: a *corona* of listeners who had no formal involvement with the court could be expected, but not guaranteed. Orators needed to manage all these elements in a forensic case, since they had the potential to affect the outcome; but since they involved words exchanged with other people, not all of them benevolent, things could happen in ways other than the orator hoped or expected. As a result, they showcased an orator's ability to improvise. The connections between forensic oratory and public oratory more widely in Republican Rome can be seen in such informal exchanges and improvisatory capacity: in the second part of this chapter, I explore other venues for oratory, especially the *contio*, and the ways in which such venues set orators challenges in engaging in an unscripted and unprepared manner with their audience. The close relationship between forensic activity and the wider political context meant that there was a continuum of skills and dangers: forensic activity provided one among a number of locations for members of the elite to engage with the citizen body, and such engagement could go badly as well as successfully.[2]

1 Quaestiones

Cases, for both prosecution and defence, were built up from a combination of the orator's own presentation of the case and of evidence provided by witnesses, in statements and in subsequent cross-examination.[3] The precise balance between speech and witness evidence and the order in which both elements were presented varied between different courts and was subject to variation over time as the procedural framework of the *quaestiones perpetuae* was modified, but the importance of contributions from witnesses was a constant, as the attention paid to the handling of witness evidence in rhetorical texts demonstrates.[4] Their words, whether spoken or written, were a major and indispensable contribution to the construction of a speech's argument.[5] Foren-

2 The focus in this chapter is on the *quaestiones*: other law cases generally offered much less scope and requirement for the kind of exchange I here explore, since they were normally of much less public interest.

3 On witnesses in Roman forensic practice during the Republic: David (1992) 422–428; Lévy (1992) 23–33; Steck (2006); Guérin (2015).

4 E.g. *Rh. Her.* 2.9–10; Cic. *De or.* 2.118–119.

5 Butler (2002).

sic advocacy needed witnesses. But witnesses were also unpredictable. Their statements could be and surely were very carefully prepared, but their performance in court could not be guaranteed.[6] Moreover, the other side would call witnesses, and cross-examination of hostile witnesses engendered a fresh set of dangers. In *De oratore* the treatment of invention concludes (2.294–306) with a discussion of how an orator must seek above all not to do harm to his case, for letting that happen is, according to Crassus (as relayed through Caesar Strabo), the mark of someone "wicked and treacherous" (297).[7] Antonius does not fundamentally disagree, but takes Crassus to task for implying that only a depraved advocate would allow this to happen:

> etenim permulta sunt in causis in omni parte orationis circumspicienda, ne quid offendas, ne quo inruas: saepe aliqui testis aut non laedit aut minus laedit, nisi lacessatur; orat reus urgent aduocati, ut inuehamur, ut male dicamus, denique ut interrogemus: non moueor, non obtempero, non satis facio: neque tamen ullam adsequor laudem; homines enim imperiti facilius quod stulte dixeris reprehendere quam cum sapienter tacueris laudare possunt. hic quantum fit mali, si iratum, si non stultum, si non leuem testem laeseris! habet enim et uoluntatem nocendi in iracundia et uim in ingenio et pondus in uita. nec, si hoc Crassus non committit, ideo non multi et saepe committunt. quo quidem mihi turpius uideri nihil solet, quam quod ex oratoris dicto aliquo aut responso aut rogato sermo ille sequitur: 'occidit.' 'aduersariumne?' 'immo uero' aiunt 'se et eum, quem defendit.' hoc Crassus non putat nisi perfidia accidere posse; ego autem saepissime uideo in causis aliquid mali facere homines minime malos.
>
> And so throughout a speech you must keep much under review so as not to run aground on a problem or rush into one: often a witness will not harm your case, or will do less harm if he is not provoked; the defendant begs me and his supporters urge me to attack him, abuse him and cross-question him: I'm not moved, I do not comply, I do not do as they wish; and I get no praise for it; for men without experience can more easily criticise stupid things which have been said that praise things which wisely have not been said. What damage can be done if you harm an angry, sensible, serious witness! In his anger he is willing to damage you and his

6 Guérin (2015) notes that there is little evidence for any barriers to witness coaching at Rome.

7 Cic. *De or.* 2.297: *illud uero improbi esse hominis et perfidiosi.*

> intellect gives him force and his way of life gives him weight. And even if Crassus does not do this, plenty do so, quite often. To me then, nothing is more shameful than when the response to something an orator has said, or replied or answer is this exchange: 'He's done for him' 'His opponent?' 'No, himself, and his client'. Crassus thinks this can only happen through treachery; but I very often see men who are not at all bad doing bad things in court.[8]

The conversation is concerned with an advocate's capacity to damage his case in general, but it is striking that the handling of witnesses is used as the main example of a damaging (and unnecessary) action. The situation Antonius describes is that of cross-questioning a witness for the other side, and implies that there are circumstances—when the witness is credible because of his life and intellect—when no questioning, or at least no hostile questioning, is the best line to follow. There is a suggestion, too, that such refusal to engage vigorously with a hostile witness was likely to provoke criticism from the rest of the defence team.

Furthermore, what witnesses said could be believed, or not believed; and the judges' withholding of belief was a comment on both the orator who had brought the witness forward and on the witness him- or herself. When, as often was the case, the witness as well as the defendant was involved in the political life of Rome, the reaction to a witness' performance by the judges, composed of his peers, became an exercise of public judgement parallel to, if considerably less freighted than, the judgement delivered on the defendant himself.[9] The anger which Antonius knew could be stirred up in a witness for the other side is a linked phenomenon: witnesses became angry in such circumstances because hostile cross-questioning was designed to undermine their credibility, with results that could potentially extend beyond the court itself.[10]

A well-known example of this phenomenon arose from the witness evidence offered at Clodius' trial on sacrilege charges in 61. Cicero gave evidence, which destroyed Clodius' alibi. But Clodius was still acquitted; unsurprising, then, that Cicero sought as soon as possible to re-establish his credibility by establishing

8 *De or.* 2.301–303.

9 Cases in which witness evidence provided by eminent men was disbelieved by the judges form the majority of cases which Valerius Maximus discusses in 8.5.

10 See *Rh. Her.* 2.9, where the two activities the orator needs to engage with in relation to witnesses are *inprobatio*, discrediting, and *interrogatio*, cross-examination; the two headings to be used for the former are way of life (*uita*) and the consistency of their evidence with other evidence (*testimoniorum inconstantia*).

bribery, not his fallibility, as the cause of the judges' decision. It is significant, too, that this act of interpretation took place in public, at a meeting of the Senate which took place soon after Clodius' acquittal: Cicero gave a speech at this meeting, in which he attacked Clodius, but he also exchanged remarks with Clodius in what he describes as an *altercatio*:

> surgit pulchellus puer, obicit mihi me ad Baias fuisse; falsum sed tamen. 'quid? hoc simile est' inquam 'quasi in operto dicas fuisse?' 'quid' inquit 'homini Arpinati cum aquis calidis?' 'narra' inquam 'patroni tuo, qui Arpinatis aquas concupiuit'; nosti enim Marianas. 'quousque' inquit 'hunc regem feremus?' 'regem appellas' inquam 'cum Rex tui mentionem nullam fecerit?'; ille autem Regis hereditatem spe deuorarat. 'domum' inquit 'emisti.' 'putes' inquam 'dicere "iudices emisti".' 'iuranti' inquit 'tibi non crediderunt.' 'mihi uero' inquam 'XXV iudices crediderunt, XXXI, quoniam nummos ante acceperunt, tibi nihil crediderunt.' magnis clamoribus adflictus conticuit et concidit.

> The little boy gets up and accuses me of being at Baiae; not true, but anyway. 'Well? Is that like saying that I was somewhere hidden?' 'What has a man from Arpinum to do with warm springs?'. 'Tell that', I said, 'to your counsel, who was keen on an Arpinum man's property at the springs' (you know about Marius' property.) 'How long', he said, 'shall we bear this king'? 'You appeal to a king, when Rex made no mention of you?' (he had been hoping to squander an inheritance from Rex). 'You bought a house'. 'You would think', I said, 'that he said, "He bought a jury"'. 'They did not believe you on oath'. 'Oh twenty-five judges did, but thirty-one gave you no credit at all—they took their fee up–front'. Overwhelmed by a great roar he falls silent and collapses.[11]

It was not enough for Cicero to state that Clodius was guilty; he had to overwrite the verdict with a fresh interaction with Clodius in which he now came out victorious, as indicated by the response of this fresh audience, whose shouts, Cicero claimed, showed their support for him and his presentation of Clodius as one acquitted through bribery.

The defendant could be brought forward as a witness, and he could also speak in his own defence.[12] Even if he (or she) were silent, his presence in

11 Cic. *Att.* 1.16.10.

12 Steck (2006) 120–128.

the court created opportunities for both prosecution and defence orators. He and his reactions could be used as a physical exemplar to support the orator's argument, and the defendant's capacity to evoke pathos is amply evidenced from the perorations of Cicero's speeches, where his presence, and his tears, are demonstrations of the need to acquit, both through his manifestation of virtue and through a contrast with his prospective absence were he to be removed from the *res publica* by the decision of the judges.[13] In such passage, Cicero can put words into his silent client's mouth: so Murena *orat atque obtestat* the judges (*Mur.* 87). Milo offers a variation on this model. Cicero appeals to the judges not to misread the signs:

> nolite, si in nostro omnium fletu nullam lacrimam aspexistis Milonis, si uoltum semper eundem, si uocem, si orationem stabilem ac non mutatam uidetis, hoc minus ei parcere: haud scio an multo etiam sit adiuuandus magis.
>
> Do not feel less compassion towards Milo if, in the midst of all our tears, you see none from him, if his expression is unchanging, if his voice and speech are firm and unaltered: perhaps these should rather help him.[14]

Milo does not engage in the expected gestures and behaviour of the defendant facing an imminent verdict, and we may suspect that it is this failure which forced Cicero to note and draw attention to the gap in order to redefine it in terms of Milo's heroism. But the passage neatly pinpoints the conventions of defendant behaviour. The distinctive clothes which defendants were expected to assume and lack of care for aspects of their physical appearance also contributed to their distinctive presence in court, and were also conventions whose neglect created a negative impression. The defendant's value was not confined to the emotional charge of his potential conviction: his physical presence could also become a guarantee of his moral virtues.

A very striking example of this phenomenon is Antonius' defence of Manius Aquillius early in the 1st century B.C., at which he ripped open Aquillius' tunic open to display his scars, all at the front and thus indicators of his courage in hand to hand combat.[15] Above all, the defendant needed to stay the course.

13 So, for example, *Mur.* 86–90; *Flac.* 101–106; *Sest.* 144–147; *Cael.* 77–80; also: Winterbottom (2004) 215–230.

14 Cic. *Mil.* 92.

15 Cic. *De or.* 2.124, 2.194–195; cf. also: Cic. *Verr.* 2.5.3; *Flac.* 98; Liv. *Per.* 70; Quint. *Inst.* 2.15.7.

Cicero records the earlier trial of one of Oppianicus' alleged co-conspirators in *Clu.* 58–59: he structures the anecdote around the punch-line of the defence advocate repeatedly urging the judges to "look!" at the defendant, only to turn himself and find his client gone. But while Fabricius' departure was as a result funny, it also signalled his despair in his own case. Unsurprisingly, he was convicted.

In this group of verbal and non-verbal behaviours, the defendant was often not alone. Cicero's speeches record the presence of children (whose vulnerability if deprived of their male parent is emphasised for pathetic effect), siblings and parents.[16] Valerius Maximus records cases where a defendant who was generally regarded as guilty escaped conviction because of the feelings his relatives engendered among the judges. Thus A. Gabinius escaped conviction in 54 when prosecuted by Memmius because his son "under the influence of total panic threw himself as a suppliant at Memmius' feet".[17] But Quintilian adds a note of caution: he has a dossier of peroration mishaps which occurred because of a failure on the part of the defendant and his supporters to back up what the orator was saying.[18] Quintilian draws on his own forensic experience but he also has examples from the Republican period. He notes that disaster is particularly likely to happen when there has been a striving for dramatic effect: *praecipue uero cum aliqua uelut scaenice fiunt aliter cadunt*.[19]

Forensic oratory thus involved the orchestration, by the orator, of his own formal extended speech with a range of supporting material, some of it verbal, some not, but all arising from his interaction with other individuals, present and absent.[20] This supporting material was an integral part of forensic practice: neither prosecution nor defence could succeed without evidence from witnesses and only when the defendant was speaking on his own behalf without colleagues can we envisage a speech without interaction between orator and defendant—and even in such a hypothetical case, the defendant might choose to appeal to members of his family. An effective orator had to prepare

16 According to Cicero's subsequent written presentation of the cases, Sulla, Flaccus and Sestius had their children present (*Sull.* 88; *Flac.* 106 *Sest.* 144, 146); Caelius and Fonteius their parents (*Cael.* 79; *Font.* 48); Fonteius, a sibling (*Font.* 46–49).

17 Val. Max. 8.1 absol. 3: *consternationis impulsu ad pedes se Memmii supplex prostrauit.*

18 Quint. *Inst.* 6.1.37–49.

19 Quint. *Inst.* 6.1.38, "things which are designed for dramatic effect particularly go wrong".

20 Witness testimony could be provided in written form: Butler (2002); Steck (2006) 58. Such testimony was insulated from the unpredictability inherent in the other situations I discuss.

this material as carefully as he could but be ready to change tack when faced with something unexpected, whether that be what witnesses for the other side said or the recalcitrant behaviour of those he had organised for his own side. Cicero's speeches provide metatextual indicators, such as deictic pronouns or instructions to court officials to read material out, which demonstrate how he used this kind of material, even though their actual deployment will surely have disrupted the flow of his speech as it is preserved in the versions he disseminated.

Interaction with witnesses, clients and clients' entourages do not, however, exhaust the possibilities for informal exchange in the Republican court. The orator had also to relate to his audience, or better audiences: a clear distinction can be drawn between the judges and court president on the one hand, and everyone else who might be listening. The first group had no choice about their presence, and were directly obliged to participate in the process by recording their vote at its end. The second group, which can be described as an "informal audience", was the *corona*, composed of any individual who wished to stand in the vicinity of the court and watch and listen. Such individuals were under no obligation to arrive at the start of proceedings nor to stay until the end and had no formal way of registering their opinion on what they heard.

Interactions between orators and these audiences were a normal part of what happened in court. To a certain extent, they can be traced in Cicero's speeches, most obviously in the frequent appeals to *iudices* and to a lesser extent in the creation of a shared forensic history drawing on a collective identity for the judges in the *quaestiones*.[21] Revealingly, in the discussion of wit and humour in *De oratore*, Caesar Strabo early on identifies as faulty uses of humour to attack the other side, which could be transferred to judges.[22] Orators will have hoped, at least, for attention from the judges, and to avoid evoking their hostile laughter, and judges were obliged, in theory at least, to remain in court. But no speaker was guaranteed the attention of the *corona*: it had the capacity to form and disperse at will, and its presence and size could be taken as a marker of a speaker's quality, or at least of his ability to command attention. For the character "Brutus" in *Brutus*, the *corona* is a *sine qua non* for forensic oratory: *ego uero … ut me tibi indicem, in eis etiam causis, in quibus omnis res nobis cum iudicibus est, non cum populo, tamen si a corona*

21 This is particularly evident as a tactic in the *Verrines* (in which the composition of juries is a live issue) and in *Pro Cluentio*, which engages closely with recent judicial decisions.

22 Cic. *De or.* 2.245.

relictus sim, non queam dicere.[23] His observation is provoked by the famous incident involving the elder Curio, who was abandoned by his audience at a *contio*.[24] We may suspect a certain degree of pointed characterisation in this passage, with Brutus deliberately chosen to articulate the link between mass participation and good oratory in the strongest possible terms in keeping with his role in the dialogue to exemplify what has been lost to oratory with the transformation in political practice after the civil war. There may in fact have been significant differences between different kinds of forensic case in levels of coronal participation, with some (those with well-known defendants and/or lurid charges) attracting considerably more public interest than others. Nonetheless, the fundamental point is convincing: a voluntary audience was a sign of oratorical skill, and thus to be cherished. This attitude was not undermined by a lack of inhibition among members of the *corona* in their response to what they heard and saw. Indeed, positive signs of approbation were welcomed. One of Catullus' poems record a forensic performance by his friend Calvus:

> risi nescio quem modo e corona
> qui, cum mirifice Vatiniana
> meus crimina Caluos explicasset,
> admirans ait haec manusque tollens
> 'di magni, salaputium disertum!'[25]

As the meaning of *salaputium* is unclear exactly what made Catullus laugh is obscure, but the remark was clearly meant as a compliment to the speaker, and one uttered sufficiently loudly for at least some of the other members of the *corona* to hear.[26] We can contrast the passage from *De oratore* quoted above (301–303), where Antonius' incontrovertible evidence for a failed forensic strategy is a *sermo*, a conversation: he does not identify where the conversation is taking place but the only relevant location is surely among members of the *corona*. As the judges could see, and hear, the reactions of the *corona* just as

23 Cic. *Brut*. 192: "for myself, at least, even in cases where our whole business is with the judges, not the people, I cannot speak if I am deserted by the *corona*".

24 Cic. *Brut*. 192, 305; also: Rosillo Lopez (2013) 294–295.

25 Catull. 53: "I laughed at someone from the *corona* who, when my Calvus was unrolling the Vatinian charge-sheet wonderfully, said in wonder, lifting up his hands, 'Good heavens, what an eloquent *salaputium*!' ".

26 Corbeill (1996) 39; on the meaning of *salaputium* and possible stylistic implications: Weiss (1996) 353–359; Hawkins (2012) 329–353.

much as the orators could, a bad response was not simply upsetting to an orator; it could directly influence the ultimate verdict. In Antonius' description of his great triumph at the Norbanus case, it is the moment at which he realises he "has taken possession of the court", that marks his transition to the most emotionally charged part of his speech:

> me in possessionem iudici ac defensionis meae constitisse, quod et populi beneuolentiam mihi conciliaram, cuius ius etiam cum seditionis coniunctione defenderam, et iudicum animos totos uel calamitate ciuitatis uel luctu ac desiderio propinquorum uel odio proprio in Caepionem ad causam nostram conuerteram, tum …[27]

> … that I had taken possession of the court and my defence, because I had won over the people's good-will, whose rights I had defended in connection with the disturbance, and I brought over to our side all the judges' opinions, either because of the crisis facing the community or through grief and longing for their relatives or specific distaste for Caepio, then …

It is not simply the attitude of the judges that is relevant; having the people—by which Antonius must mean those whose opinion he could gauge, namely those present around the court in the *corona*—on his side was also crucial. The *corona* mattered. Its reactions to the case being heard were available to the judges, and contributed to their decision; a competent orator had at the least to try to prevent it from behaving in a way that prejudiced his case, and ideally to deploy it as a factor in his favour.

Effective forensic performance thus required the orator to manage and respond to a great many elements, not all of which were under his direct control. These had the potential to blur the distinction between formal and informal speech and between prepared and unprepared speech. Indeed, one function of a written version of a speech was to sanitise what had actually happened in court and, if necessary, to impose upon a messy and unsatisfactory set of exchanges the appearance of order and control. A clear example is Cicero's *In Vatinium*, which offers as a continuous text the record of what would in court have involved cross-examination as part of the trial of Sestius.[28] Cicero records in a letter to Quintus the result of the trial, including its effect on

27 Cic. *De or.* 2.200.

28 Pocock (1926); Bensi (2009) 427–458; Corbeill (1996) 49–55.

Vatinius: … *Vatinium … arbitratu nostro concidimus dis hominibus plaudentibus*.[29] The speech itself, a pendant to the extraordinarily ambitious *Pro Sestio*, was designed to confirm that victory in permanent form.

2 Other Venues for Oratory

The interrelationship of formal speech with informal exchanges in forensic contexts show marked similarities to what happened during certain kinds of deliberative speech during the late Republic. Speeches delivered to the people at *contiones* were also liable to interruption, both predictable and not, and the *contio* itself could be used to enact an oral exchange to which the audience might respond, just as the *corona* could choose to offer a reaction to the performance it viewed. The similarities are surely not coincidental. *Quaestiones perpetuae*, which met regularly to hear a particular charge and at which the decision was taken by members of a small subset of the citizen body, were a relatively recent development in Roman legal practice. The first was established in 149 B.C., to hear cases of extortion (*repetundae*); the development of other *quaestiones* cannot be established with complete chronological precision but it does appear that they were only systematised as a set of fully parallel courts by Sulla very shortly before Cicero made his debut before a *quaestio* with his defence of Roscius Amerinus in 80 B.C.[30] Prior to the establishment of the *quaestiones*, capital offences were judged by the people, and they retained that capacity throughout the Republic, even if it was almost always delegated to *quaestiones*.

On one striking occasion, it was not and the people resumed their role as capital judges, when Labienus prosecuted C. Rabirius in 63 B.C. on a charge of *perduellio*.[31] The conceptual as well as physical space in which the people acted as judges remained open throughout the Republic; and once *quaestiones* had been created the assertion by the people of direct rather than indirect judgement became a move with strong *popularis* colouring. It can be connected to demands for accountability from magistrates, as appears to be the

29 Cic. *QFr.* 2.1.1, "we cut up Vatinius at our pleasure, to great applause from gods and men". Divine approval presumably involved some meteorological or avian phenomenon. Cicero notes later in the letter that Vatinius left the court 'upset and damaged' (*perturbatus debilitatusque*) but his speech was not the only cause: others present had promised a prosecution against Vatinius.

30 Lintott (2004) 61–78.

31 Lintott (2008) 120–125.

case with special *quaestiones* set up in the later 2nd century, to investigate unchaste behaviour by Vestal Virgins and misconduct by magistrates in connection with the war with Jugurtha.[32] The policing of behaviour that affected the *res publica* was a matter for all citizens.[33] Their oversight was, by the end of the Republic, largely delegated to the *quaestiones perpetuae*, but control could be reasserted.

It is in this sense, that of the intimate connection between the well-being of the *res publica* and the behaviour of its magistrates, that the *quaestiones* were political. The offences they considered were committable most easily, or in cases only, by magistrates and those seeking such office; as a result, the verdicts had political significance. This remains the case even if, as Riggsby has argued, what we know of jury deliberations indicates that judges reached their decision, and were expected so to do, on the basis of the evidence in front of them and not as the result of pre-existing support or hostility towards the defendant, however that might have been engendered.[34] Trials at *quaestiones* were political because of their content, and consequently the identity of defendants; but they were probably not, or only very rarely, political in the sense that animosities and oppositions developed elsewhere in the public sphere found articulation in the votes cast by judges.

The inherently political nature of forensic *quaestiones*, and their development out of a situation in which the people judged, helps to explain the similarities between aspects of forensic performance and other areas of public life. There was an annual process of judgement—though not in a forensic context, nor with a specific focus on wrong-doing—in Roman elections, where the people reached a collective decision about the identity of those they wished to serve them as magistrates. In contrast with other aspects of Roman public life, formal oratory did not play a role in the process of elections; but other kinds of speech could not be similarly controlled.[35] Failure to respond appropriately or adequately to informal challenge, query or observation by the electorate could prejudice a candidate's chance to win. Such exchanges became part of the persona a candidate presented and the narrative which he offered; facility in managing them, insofar as they were amenable to management, was a useful skill. Cicero gives a revealing portrait of the expectations of a candidate in his defence of Plancius on charges of electoral bribery, and Valerius Maximus

32 Vestal Virgins: 113, *quaestio* presided over L. Cassius Longinus Ravilla; Jugurthine war, *quaestio extraordinaria* established by a *lex Mamilia* in 109; also: Rawson (1974) 207–209.

33 Riggsby (1999) 157–171.

34 Riggsby (1999) 5–20.

35 Tatum (2013) 133–150.

has an entire section devoted to electoral defeats which indicate the pitfalls attached to inappropriate interaction with the people, whether it be ill-judged humour, as in the case of Scipio Nasica, or stinginess, as with Aelius Tubero.[36] Cicero himself capitalised on the opportunities offered by oratory in the Senate during his consular campaign by disseminating *In Toga Candida*.[37] Although fragmentary and preserved largely in Asconius' commentary, it is clear that the speech, though ostensibly a contribution to a debate on *ambitus* legislation, was a personal attack on his two most serious competitors, Antonius and Catilina. According to Asconius, Antonius and Catilina replied in kind.[38] Thus a senatorial debate was hijacked by consular candidates, seeking to impress their senatorial peers with their suitability for office and—more importantly—the weaknesses of their rivals.

Another important arena for public judgement was the census and its reviews of the senatorial and equestrian orders. During this process, an individual's identity as a senator or a member of the equestrian class could come to an end; although the consequences were not remotely as severe as conviction on a capital charge, such a result was a reputational disaster. Senators who managed to reverse the censors' decision by regaining their membership of the Senate were figures of exemplary interest.[39] The people had never had oversight of the census, but at the very end of the Republic Clodius sponsored a law during his tribunate which gave those expelled or otherwise rebuked by the censors the right to a hearing.[40] This measure is clearly in a *popularis* tradition of demanding accountability for magistrate's actions: the censors could no longer reach arbitrary decisions about senatorial membership. As it happens, Valerius Maximus refers to an incident at a hearing in front of the only censors to be affected by this *lex Clodia*, Valerius Mesalla and Servilius Isauricus in 55 or 54 B.C.[41] Scribonius Libo was being accused in front of the censors by Helvius Mancia; Pompeius Magnus, who was apparently present in some capacity to support Libo, commented unfavourably on Mancia's age, who responded with

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36 Cic. *Planc.*; Val. Max., 5.7, *De Repulsis*; also: Cicero's observation on the *exemplum* of Tubero at *Mur.* 76: *odit populus Romanus priuatam luxuriam, publicam magnificentiam diligit.*

37 Crawford (1994) 163–203.

38 Asc. 93–94C.

39 The two most striking cases are perhaps Licinius Geta, on whom see Wiseman (2009) 33–57, and Cornelius Sura, consul in 71 and executed in 63. They lost senatorial membership in the two most expulsive censuses of the late Republic, in 115 and 70.

40 Tatum (1999) 133–135.

41 Val. Max. 6.2.8; these censors did not complete the *lustrum*. This *lex Clodia* was repealed in 52 B.C.

an attack on Pompeius' own career as a young man. What exactly Valerius Maximus is quoting is something of a problem when he claims to reproduce what Mancia said, but even if it is not Mancia's own text, the occasion itself is revealing. Within what seems to have been a quasi-forensic context, perhaps when Pompeius was offering testimony, an unscripted, unplanned oral exchange took place, in which Pompeius suffered reputational damage through his inability to control and dominate impromptu interactions.[42]

3 Conclusions

Public speech mattered hugely in Republican Rome, but it was not a phenomenon confined to formal oratory. It was not simply that the audience always had the opportunity to comment, to respond and to express their opinion on hearing a speech, (even though the precise form in which that response might emerge varied between kinds of audiences).[43] The very idea of formal oratory, of the extended uninterrupted speech which Cicero's speeches preserve, requires critique. In reality, orators needed to earn their audience, and keep on earning it, by offering speech which was important enough and interesting enough to hold its attention, and in many cases its presence. They faced interruptions, and they needed to engage with what their audience said and did. These demands held true across what is in other respects a deep generic divide between forensic and deliberative oratory at Rome. Public life in Rome involved constant scrutiny by the people or by those to whom the people's responsibilities were delegated; that was the case even for men who were never prosecuted and thus managed to avoid the most intense and serious form of scrutiny offered by a *quaestio*.

The theatrical metaphor is an enticing one in attempting to understand Roman oratory, particularly forensic oratory. It is a metaphor that the Romans themselves used, fully aware that oratory involved performance and that the links between dramatic and forensic delivery could be close. But caution is needed, to avoid importing misleading analogies along with useful ones. Roman oratory was never more than partially scripted. It is as though the Roman orator entered the stage with his own part prepared and memorised, but with less than total confidence in what his co-performers might say, the uneasy

42 Steel (2013b) 151–159.

43 Also: Morstein-Marx (2004) 119–159 on the *populus*. Senators could choose where they sat during meetings of the Senate.

consciousness that at any moment he might be entirely upstaged by a member of the audience, and the prospect of an empty theatre if he failed to deliver.[44]

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44 Perhaps not coincidentally, the Republican theatre was another place where vigorous audience responses was to be expected, as well as an alertness to the political significance—even if coincidental—of what was said.

PART 2

Ethopoiia

CHAPTER 7

Ēthos and Logical Argument in Thucydides' Assembly Debates

*Christos Kremmydas**

Introduction

Speeches in Thucydides' *History* are among the most talked about topics in Thucydidean studies.[1] Scholars have been debating, *inter alia*, their role in the work as a whole, their historical reliability, and their relationship to contemporary Greek oratory in the last third of the fifth century. Aspects of argumentation of key speeches in Thucydides' history (e.g. in the Mytilenean debate) have also been the subject of scholarly analysis.[2] There is no doubt that the Athenian historian made speeches (direct and indirect) integral to his presentation of events of the Peloponnesian war and his portrayal of the role of individuals in it. He thus adds vividness to the narrative of events and gives his readers an insight into the decision-making of the main parties at key junctures of the war.

But his reconstruction of direct speeches delivered in assembly meetings may also convey a performative aspect of these debates: they are intense verbal interactions between individuals before the "historical" audience in different Greek poleis involved in the war (Athens primarily, but also Sparta, Syracuse, Gela, Camarina, Acanthus, Torone (indirect), Scione (indirect), Amphipolis, Argos, Chios (indirect), Delos (indirect)) and the real audience, Thucydides' readers.[3] These *agōnes* involve the verbal performances of key actors in the *History* and their structure, texture, and content all target the cognitive faculties of Thucydides' audiences.[4] And whilst the most obvious aspects of stag-

* I wish to thank the editors for their kind invitation to contribute to this volume.

1 Selected bibliography on a vast and ever-expanding topic: Tompkins (1972), Raubitschek (1973), Stahl (1973), West (1973), Westlake (1973), Stadter (1973), Hornblower (1987) 45–72, Pelling (2012), Harris (2013c).

2 MacLeod (1977= 1983; and 1978=1983) and Heath (1990) in particular.

3 One should also include audiences listening to recitations of extended passages of the *History*; cf. performance of Herodotus' *Histories*, if Marcellinus is to be believed: *Vit.* 54; see also Thomas (2003) 173–180.

4 Ober (1998) 52–121 on *agōn* and democratic debate in Thucydides; see response in Barker

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ing and acting usually associated with theatrical performances are missing from the text (or are only rarely alluded to in passing), it is clear that the speeches presented by different individuals (or groups of speakers such as ambassadors who represented by a single voice) are agonistic performances in their own right: the different audiences of Thucydides would be interested in how the arguments put forward by the speakers would advance the action in the drama of the war as reality experienced in historical time/space and as artistic, literary representation. Few people would associate argumentation with performance but there is no doubt that verbal performances by different individuals in a debate appealed to and enthused the contemporary public, and the arguments advanced were central to this appeal. Thucydidean audiences would also be keen to discover more about the character (*ēthos*) of the individual speakers/politicians and the different ways in which they contributed to specific events, decisions, and the formation of specific ideas and attitudes.

A key passage in the Mytilenean debate (3.38.4–7) suggests that Athenian audiences in particular took a keen interest in the form of arguments presented in Assembly debates and may have treated the debates themselves as spectacles. Cleon deplores the fact that the use of novel types of logical arguments by Athenian politicians in Assembly debates distorted the nature of political debate: rhetorical argument had allegedly taken precedence over substance, debates turned into spectacles, and Assembly-goers into spectators. This is presented as an undesirable state of affairs and a perversion of the standards of political deliberation, yet it is difficult to miss the irony of the speech's overly elaborate logical argumentation. However, even if Cleon was exaggerating the extent to which Athenian Assembly-goers enjoyed debates as spectacles with novel and elaborate logical argumentation at their very heart, debates as presented by Thucydides do seem to stress this competitive display of arguments and counterarguments. And Thucydides' modern readers, like contemporary audiences in Athens and elsewhere in the Greek world, are enjoying the competition of rival verbal performances that usually consist of one or two speakers (or groups of speakers in the case of envoys) performing their carefully crafted arguments, through which one also gets to know more about their character as politicians, generals, diplomats.

In this chapter, I shall seek to examine the extent to which types of arguments help project the speakers' character or seek negatively to characterise

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(2009) 203–263, who re-examines the role of *agōn* in the Thucydidean narrative and considers the limitations and possibilities it offers the Athenian historian and his readers.

opposing speakers.[5] My chapter will shed light on the dynamic interaction between two different means of persuasion (*ēthos* and *logos*) in an agonistic framework. I shall also show that the use by Thucydides of different types of logical arguments reflects the expectations of demanding contemporary audiences that sought to be intellectually stimulated and entertained. The absence of explicit cues relating to theatrical performance in the context of Assembly debates is due to a conscious decision on the part of Thucydides to prioritise argumentation as a means of highlighting ideas and promoting individual characters in his *History*.[6]

1 Presentation of *ēthos* in Thucydides' History

The presentation of an individual's character is as important a quality of historical prose as the presentation of emotions. However, the presentation of *ēthos* in Thucydides did not live up to the expectations of at least one prominent ancient critic: Dionysius of Halicarnassus averred that Thucydides' *forte* was in representing emotions, while Herodotus was better at depicting character.[7] Although Thucydides' characters are certainly not as vivid or colourful and do

5 The problem of composition and historical reliability of the speeches in Thucydides' *History* is important (for selected bibliography on this expansive topic, see n. 2 above) but will not be addressed in this chapter. There is no doubt that speeches owe a great deal to the historian's own literary fashioning and his conscious attempt at individuating key characters of his *History* (see e.g. Tompkins 1972; 1993a; 1993b). Nevertheless, I believe that one can still learn something from Thucydides' Assembly speeches about the art of argumentation, the projection of character, and their interaction in contemporary deliberative oratory. Firstly, Thucydides probably conformed to the contemporary conventions of Assembly-speaking. Secondly, his arguments needed to sound plausible even if he had free reign in terms of their form. Thirdly, if anything can be deduced about an individual's character from their Assembly speeches as reported by Thucydides, this would have also been the case in real historical Assembly speeches. After all, there are similarities in terms of modes of argumentation (forms of arguments, *topoi*) and means of characterisation between Thucydides' speeches and extant fourth-century assembly speeches (and rhetorical theory; see Kremmydas 2016).

6 Note that in the fourth century the criticism of the culture of debating for pleasure in the Assembly is attested as a *topos* in Demosthenes' deliberative speeches (e.g. 3.3, 4.51, 14.1). It might have already become a *topos* in deliberative oratory but this cannot be proven in default of adequate evidence from the period between the end of the fifth century and the late 350's.

7 D.H. *Pomp*. 3.18; cf. Marcellin. *Vit. Thuc*. 51, 57.

not represent as wide a range as the ones portrayed by Herodotus, there is little doubt that he is intentional about presenting individual characters who have had an impact on his narrative of the war.[8]

Aristotle's categorisation of character among the six constituent parts of tragedy in the *Poetics* is well-known. In the same work he avers that *ēthos* sheds light on the nature of an individual's moral choice (*prohairesis*).[9] He also points out that "characterisation is what allows us to judge the nature of the agents, and 'thought' (*dianoia*) represents the parts in which by their speech they put forward arguments or make statements".[10] In the *Rhetoric* he stresses the crucial role of *ēthos* in persuasion[11] and highlights three character traits that are most persuasive in deliberative oratory ("practical wisdom, virtue, and goodwill").[12]

This interplay of *ēthos* and *dianoia* is evident in Thucydides' *History*, too, in so far as speeches and narrative together project different aspects of an individual's character, motivation, thoughts, and mental processes. Speeches also portray *dianoia* by elaborating arguments (especially logical and emotional) and thus engender credibility for the speakers. Thucydides' reconstructions of verbal performances by individuals would not have been as plausible without the medium of *logos/dianoia* illuminating the individuals' respective *prohairesis* and *ēthos*.

But unlike speeches in the Attic orators (forensic and deliberative) in which character only comes across through their spoken words, the Athenian historian is in a position to mould the characters of his *Histories* through a range of literary techniques including generic descriptions of character (including

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8 Gribble (2006) 441–442, on differences in the depiction of individuals between Herodotus and Thucydides. On characterisation through speeches in Thucydides, see Hornblower (1987) 57–59.

9 *Po.* 1450a–b; on the presentation of character in tragedy see Easterling (1990) and Goldhill (1990); for oratory see Russell (1990).

10 *Po.* 1449b (transl. S. Halliwell).

11 *Rh.* 1356a13: … σχεδὸν ὡς εἰπεῖν κυριωτάτην ἔχει πίστιν τὸ ἦθος ("character is almost, so to speak, the dominant factor in persuasion"). On Aristotle's analysis of character in the *Rhetoric*, see Fortenbaugh (1996).

12 *Rh.* 1378a5: τοσαῦτα γάρ ἐστι δι' ἃ πιστεύομεν ἔξω τῶν ἀποδείξεων. ἔστι δὲ ταῦτα φρόνησις καὶ ἀρετὴ καὶ εὔνοια ("for these are the things through which a speaker persuades without needing any proofs: good sense and virtue and goodwill"). The present study of *ēthos* in Thucydides' Assembly speeches as well as an examination of its function in Demosthenes' deliberative speeches (for which see Kremmydas 2016) shows that the character traits projected by speakers in Assembly do not necessarily correspond to Aristotle's overly neat and memorable triptych of φρόνησις, ἀρετὴ and εὔνοια.

civic traits, e.g. Athenian and Spartan),[13] differences in the prose style of individuals,[14] and differentiated rhetorical argumentation. Meanwhile the deeds in which he involves these individuals also help build up their character. Thus, characterisation in Thucydides can be distinguished into internal (i.e. through speeches) and external (i.e. through cues given by the historian or through the deeds of individuals). Speeches as a key means of internal characterisation enhance the image of individuals as it emerges through the narrative of the war. Yet, Thucydides is very selective in terms of the identity of individuals he chooses to present in greater detail,[15] and, in particular, those whom he has deliver direct (as opposed to reported) speeches. Whilst he merely cites the Corinthian ambassador Aristeus when describing his involvement along with ambassadors from Sparta, Tegea, and Argos in the embassies to Sitalces, the Thracian prince, and the Persian King (2.67.1), he attributes a reported speech to another Corinthian, Euphamidas (5.55.1). He distinguishes another Corinthian, Ariston the son of Pyrrichos, as the "best captain of those fighting on the side of the Syracusans" and attributes a persuasive speech to him (7.39.2). In a comment that prefaces an Assembly speech, he stresses that the Syracusan leader Athenagoras (6.36–41) carried a great deal of influence with the Syracusan *dēmos*. By contrast, he presents other individuals such as Diodotos without adding any comments and allows his speech to characterise him as the foil to Cleon (3.41–48).

How much should one really expect in terms of individual characterisation in Thucydides? It is true that Thucydides' readers get a better understanding of the character of individuals who enjoy more "airtime" as he makes them central to his reconstruction of the history of the war and the development of its narrative (e.g. Pericles, Alcibiades, Nicias, Brasidas, Cleon). Even so, the Athenian historian does not provide us with detailed psychological portraits of individuals and cannot approach the depth and detail that one encounters in ancient biographies, tragedy or even in forensic oratory.[16] What Thucydides provides us with instead are more general traits that help to set individual characters apart from other individuals in the narrative flow of the *History* and

13 E.g. 1.70–71 (the Corinthians contrast the Athenian character with that of the Spartans), 2.40 (Pericles on Athenian national character), 1.84 (Archidamus on Spartan character), 4.17.2 (on "laconism" in speaking).

14 Tompkins (1972) on Nicias and Alcibiades.

15 By contrast, Herodotus is less selective and portrays a larger number of diverse characters.

16 Cf. for instance Plutarch's *Lives* of Pericles, Alcibiades, Nicias, and Lysander, who all play a prominent role in Thucydides' *History*. On characterisation in Plutarch, see Pelling (2002) 283–300.

are relevant to the context (e.g. how the action is developing, why a particular decision has been taken and why an individual was or was not persuasive). For example, we can tell whether an individual is confident or dithering, brash and impertinent or pious and respectful, the extent to which their character reflects their age and other personal circumstances, whether they come across as experienced or inexperienced, reliable or unreliable. It should also be borne in mind that speeches in Thucydides seem to conform to conventions of Assembly oratory, which discouraged strong personal invective.[17] And, more importantly, through the speeches Thucydides highlights character traits that are likely to have made individual speakers (or groups of speakers, such as envoys) persuasive in the context of civic or interstate deliberation.

2 Thucydides' Framing of Debates, Individual *ēthos* and Performance of Speeches

One of the means of external characterisation of individuals is through the prefacing of debates with cues guiding the reader/audience to a view of an individual's character and the follow-up comments on the outcome and reception of debate speeches.[18] Take, for example the Spartan King Archidamus, whom Thucydides has deliver a speech at the allied conference in Sparta immediately after the Athenian ambassadors who happened to be in Sparta on other business but were nevertheless invited to justify their own position:[19]

1.79.2: "The majority tended to the same view, that the Athenians were already guilty and there should be a war at once. But their king Archidamus, who had a reputation as a man of intelligence (ξυνετὸς δοκῶν εἶναι) and good sense (σώφρων), came forward and spoke as follows".

Another well-known example of anticipatory praise of an individual's character is the brief introduction to Pericles' first speech in the Athenian assembly, his first appearance in Thucydides' *History*: 1.139.4: "… the leading Athenian at

17 If, that is, Demosthenes' deliberative speeches are a reliable guide to Assembly oratory in the Classical period; see further Kremmydas (2013) 73, 80–82.

18 For a detailed analysis see Westlake (1973) and Pavlou (2013) who offers a re-examination of passages introducing and capping Thucydidean speeches.

19 Note that Archidamus' speech, unlike the ones preceding it, was delivered behind closed doors. Cf. also Melian dialogue taking place not in the Assembly but "before the magistrates and the few" (ἐν ταῖς ἀρχαῖς καὶ τοῖς ὀλίγοις: 5.84.3).

that time and a man of the greatest ability both with words and in action" (… λέγειν τε καὶ πράσσειν δυνατώτατος).[20]

In the rest of this chapter, I shall examine three categories of speakers taking part in Assembly debates (groups of envoys representing a state, debates involving individuals and stand-alone speeches).[21] Due to the constraints of space, I shall examine a number of case studies, which showcase the different ways in which speakers' *ēthos* is projected by Thucydides in different rhetorical situations. As it will become apparent in the rest of this study, a frequently used means of characterisation through logical arguments is the use of *gnōmai* (maxims, gnomic statements), which help project a speaker's wisdom and insight.[22] Similarly, the use of historical paradigms in logical argumentation also stresses a speaker's experience and knowledge of past history at the same time as advancing a form of inductive reasoning. Furthermore, the form, content (e.g. arguments from justice, morality or expedience), structure, and placement of logical arguments in a speech, the number of *gnōmai* or paradigms deployed as well as the use of key terms or statements relating to *ēthos* (e.g. *sophrōn*/*sōphrosynē*) in close proximity to logical arguments also help accentuate an individual's *ēthos*.

3 Logical Argumentation and *ēthos* in Speeches Delivered by Groups of Envoys in Assemblies[23]

When recreating the speeches of envoys delivered in the context of Assembly debates, Thucydides' primary aim was to give an impression of what they may

20 Note the contrast to the introductory comments to his second Assembly speech in 2.59.1–3: they are subtle and anticipate the objectives of the speech in the more hostile context of 430/429; cf. comments on Athenagoras (see Th. 6.35–41).

21 My categorisation of Assembly speeches is inevitably reductionist and schematic and cannot cover every single speech reported by Thucydides to have been delivered in Assembly debates. Some speeches cross the boundaries of different categories: e.g. the speeches by King Archidamus and the ephor Sthenelaidas are presented in the context of a closed debate among Spartan officials followed by a vote by the Spartans, while the speeches of the Corinthians, the other Peloponnesian allies of Sparta, and the Athenians were delivered during an open session of the Spartan Assembly. Meanwhile, the Mytileneans' speech at the conference of the Peloponnesian League in Olympia in 428 (3.9–14) does not take place before the Assembly of a Greek polis, although this does not affect the types of arguments employed and the way they are presented by the Mytileneans.

22 Recognised by Aristotle in *Rh.* 1395b; see also Fortenbaugh (1996) 166.

23 I do not examine the speeches by the Plataeans and the Thebans in front of the Spartan

have said and how a party to the war might have been perceived by their audience,[24] their opponents and the Greek world at large (one could call this "polis" or "civic character").[25]

3.1 *Corcyraean vs. Corinthian Envoys in the Athenian Assembly* (*431*)

The first example of speeches by envoys in the Athenian Assembly and the very first set of speeches in the *History* is the debate between Corcyreans and Corinthians in the Athenian Assembly on the eve of the outbreak of the war (1.32–43).[26] It is obvious what the two sides are seeking to achieve in front of an Athenian audience: the Corcyreans seek to persuade them to become their allies, while the Corinthians urge them to desist from helping the former. The close correspondence between the arguments used by the two sides is not surprising (probably a deliberate, carefully crafted *antithesis*): the Corinthians respond and refute key arguments proposed by the Corcyreans (*lysis diabolēs*). The way in which each of the parties employs key arguments helps

judges in 3.53–67 because of their explicit forensic character. Conversely, the Mytilenean debate does betray forensic features and its subject is the punishment of Mytilene, yet it is still a debate among Athenians in the Assembly with marked deliberative elements. Diodotus stresses the priority of the deliberative aspect of the debate (3.44.1). The adoption of a forensic approach during an Assembly debate is decried and rejected by the Athenian envoys in their speech (1.73.1) following the speeches of the Corinthians and other allies (e.g. the Megarians, whose speech is only alluded to at 1.67.4) at the congress of Peloponnesian allies in Sparta (note the allegations against Athens e.g. 1.67.3–4, 68.2–4, 79.1). The fact that the question of justice was relevant to the decision that the Assembly had to take (and the ephor Sthenelaidas reintroduces it in his own speech at 1.86) does not negate the fact that the primary character of the Assembly debate is deliberative and concerns a decision about the future, namely whether the Peloponnesians should go to war against the Athenians, although they base their speech on the grounds of Athens' infraction of the treaty. On the intermingling of *sympheron* ("expedient") and *dikaion* ("just") in deliberative oratory as represented in Herodotus and Thucydides and analyzed by Aristotle, see Pelling (2012: 296–312).

24 But note that Hermocrates and Euphemus lead and speak for delegations from their respective poleis (6.75.4) at the assembly of Camarina in 415/4 (6.76–88).

25 Scholars usually refer to it as "national character": e.g. Connor (1984) 36–47, 72, 73; Crane (1998) 197, 225; Luginbill (1999).

26 A summary of an earlier debate between Corcyraeans and Corinthians in Corinth is reported in 1.28–29. Note also the emotional background to the debate provided by Thucydides: the Corinthians had already been angry over Corcyra (i.e. the situation that preceded the debate presented to us; note 1.31) but they were also fearful that they might come to harm because of a potential alliance between Athens and Corcyra.

project character traits that make them appear more plausible to Thucydides' audience and persuasive in the competitive context of the Athenian assembly.

In the first speech of the debate (32–36), the Corcyreans ground their argumentation primarily on the notions of expedience (*to sympheron*)[27] and utility (*to chrēsimon*) and to a lesser extent on the concept of justice (*to dikaion*).[28] This is the only possible way of putting their case forward, since they do not have any other prior relationship (mutual benefaction or alliance) to fall back on. They stress the fact that although their position of neutrality was a result of their prudence (*sōphrosynē*), under the present circumstances this virtue might be considered as cowardice and weakness (ἀβουλία καὶ ἀσθένεια), thus helpfully anticipating possible accusations on the part of their opponents. Establishing a credible, reliable *ēthos* in front of their Athenian audience is key here. They go on to elaborate why the proposed alliance makes sense militarily, how it will bring benefits to Athens and will cause Corcyra to be forever in her debt. Having adequately expounded the notions of expedience and utility (expedience is reiterated at 36, where they stress the strategic location of their island), they move to two arguments from justice, which anticipate two arguments of the Corinthians: first, they were going to maintain that the Corcyreans were disrespecting the customary relationship between colony and mother-city and, second, that the Athenians would not be breaching the peace treaty with Sparta should they decide to take Corcyra on as an ally. The Corcyreans respond by arguing that not only are the Corinthians in the wrong but they are also trying to deceive the Athenians (34.3). A *gnōmē* repudiating the idea of making concessions towards one's enemies ("… for concessions to one's enemies end in regret and the fewer one makes the safer one will be"[29]) underscores the hardening of their stance: far from being kin, the Corinthians are enemies and should be treated as such. They conclude their speech by reiterating the strategic benefits that the alliance with Corcyra would confer on Athens.

The arguments they use in conjunction with the *gnōmē* and the reflection on human emotions in a deliberative context, all amplify the impression that the Corcyreans are confident. This is to be expected since they have arrived in Athens on the back of a famous military victory. They also come across as knowledgeable, single-minded and even ruthless in their pursuit of their objectives. They are not afraid to talk about their character as a key element

27 The Corcyraeans use terms denoting expedience and utility and their opposites eight times in their speech.

28 Terms denoting "justice" occur three times in the Corcyraeans' speech.

29 34.3: ὁ γὰρ ἐλαχίστας τὰς μεταμελείας … λαμβάνων ἀσφαλέστατος ἂν διατελοίη.

to persuasion and tackle possible misconceptions about it arising from their actions: their prudence might be misunderstood as cowardice or weakness. The arguments presented in the rest of their speech suggest that they are not imprudent, weak or cowardly. What is more, the Corcyraeans know their strengths and the expectations of their audience, i.e. what the Athenians might want to hear at this point in time. It is certainly not random that they place the arguments from justice in the middle of their speech (probably the weaker of their arguments: *ordo homericus*),[30] while emphasising the theme of expedience of the proposed alliance at the start and the very end of their speech.

By contrast, the Corinthians begin their speech (37–43) by refuting the arguments put forward by the Corcyreans. Arguments from justice and morality predominate in their speech, although they also seek to refute the arguments on expedience and utility put forward by their opponents.[31] They appeal to precedent (the case of Samos) and their offer of help to the Athenians in their war with Aegina (the implication is that they are owed *charis*). Crucially, they attack their former colonists' *ēthos* early on in the speech: contrary to their professions of prudence the Corcyreans are sinister rather than virtuous (ἐπὶ κακουργίᾳ καὶ οὐκ ἀρετῇ ἐπετήδευσαν). The fact that they are not allied to anyone is a cover for injustice (τὸ εὐπρεπὲς ἄσπονδον … ὅπως … ἀδικῶσιν). The Corinthians use a syllogism to stress that the Corcyreans are not ἄνδρες ἀγαθοί despite their claims. However, the Corcyraeans had not claimed to be virtuous at any point during their own speech. This is, therefore, a rhetorical ploy by the Corinthians to score a moral point and cast aspersions on the character of the Corcyraeans in the next couple of sentences (38.1–2). Their subsequent arguments focus on their own character as presented through the perspective of their more respectful and pious colonists who offer them the honour that is their due. They thus create the perfect contrast to their recalcitrant former colonists. But the character of the Corcyreans is never too far off the sights of the Corinthians: they argue that they keep offending "because of the arrogance and licence" (38.5: ὕβρει δὲ καὶ ἐξουσίᾳ πλούτου …).

In the rest of their speech, the Corinthian envoys first turn to the legal case against the Corcyreans, which they anchored on the problem of Epidamnus.[32] Their main argument is that any appeals to justice and arbitration on the part

30 For this rhetorical strategy of arrangement of arguments see Usher (1999) 148, and Kremmydas (2012) 341.

31 The Corinthians use terms denoting expedience and utility (τὸ χρήσιμον, ὠφέλεια, ξυμφέρον) four times and terms denoting justice/fairness and morality and their opposites (δίκαιον, ἄδικον/ἀδικέω, βλάβη, ἔγκλημα, κακουργία, ἀρετή) a total of twenty-five times.

32 For a brief history of the Epidamnus affair, see Thuc. 1.24–30.

of the Corcyreans are empty rhetoric (39.2: τότε καὶ τὸ εὐπρεπὲς τῆς δίκης παρέσχοντο), since they took place after events that appeared to compromise their own safety. The antithetic structure of the arguments employed in this section serves to highlight the absurdity of the Corcyrean legal position and arguments. Next, the Corinthians turn to the Athenians and present legal and moral arguments regarding their position. The correct legal stance, they argue, is for Athens to join the Corinthians rather than the Corcyreans. What is more, the Athenians owe them a debt of gratitude since they received a naval contingent from Corinth in their war against Aegina in the early fifth century, before the outbreak of the Persian Wars. They are morally bound to help Corinth in order to repay this historic debt. It is on a moralising tone that the speech reaches a climax with an appeal to the young among the audience. This concluding section contains no less than three *gnōmai* (i.e. statements of universal appeal) thus enhancing the impression of the Corinthians' experience and authority.

Overall, the arguments advanced by the Corinthians seem more elaborate in terms of their form and structure (esp. arguments from probability) than those used by their opponents. This combined with their emphasis on arguments from justice suggests that the Corinthians are more accustomed to forensic-style arguments. They, too, seem to know their audience and their expectations. Did they hope to create rifts among the audience, hence the direct appeal to the young members of the audience in the Assembly?[33] What does this suggest about the character of the Corinthians? Their use of *gnōmai* projects an image of wise and experienced statesmen-diplomats. They, too, talk of prudence (σωφροσύνη) but give an impression of shrewdness and cunning.

3.2 *Speeches by Corinthian and Athenian Envoys in the Spartan Assembly (431)*

The Spartan assembly provides the setting for the debate between Corinthian and Athenian envoys (1.68–78).[34] The speech of the Corinthians is essentially an elaborate means of characterisation of both Spartans and the Athenians, while that of the Athenians affirms aspects of their character as presented by the Corinthians and characterise the Spartans. At the same time, they have an opportunity to justify themselves in ideologically charged terms in front

33 Such a split along age lines is also evidenced in the Athenian assembly of 415, the setting of the debate between Alcibiades and Nicias (6.8–23).

34 On the "resistance" of this debate to a straightforward categorisation, see n. 23 above.

of a hostile (Spartan) audience. The ensuing speeches by Archidamos and Sthenelaidas refocus the debate and the speech by the Spartan ephor swings the pendulum in the direction of war.

After a short introduction (68) that portrays them as wise and experienced ('we have already given you advice but you have not listened to us') yet unafraid to challenge their Spartan allies and quite aggressive in terms of the tone they adopt, the Corinthians (69–71) place themselves rhetorically between the other Peloponnesian allies who are levelling charges against the Athenians and the Spartans who are also responsible for having tolerated Athenian aggression. In addition to the use of twlo *gnōmai* to support their statements in 69 ("the one who truly enslaves people is the one who is able to prevent enslavement but does nothing about it …"; "men of action have their plans worked out, and if their opponents have not made up their minds yet they attack them without any further warning."[35]), they also provide a lesson from past history explaining how the Spartans have failed to react to the Athenian successes and Persian failure since the Persian wars and stress their credentials in criticising the Spartans (ἄξιοι … ψόγον ἐπενεγκεῖν: 70.1). The rest of 70 is dedicated to an antithetic presentation of the Athenian and Spartan qualities (οἱ μὲν … ὑμεῖς δὲ and similar antithetic constructions are used throughout this section) from which the former emerge the clear winners. Whilst Spartan ἡσυχία ("quiet") is a problematic trait (ἡσυχάζετε: 69.4), Athenian success is essentially based on its negation: they repudiate it and do not allow others to enjoy it (70.9). Since they are coming up against such a formidable and innovative opponent, the Spartans now need to substitute action for their ἡσυχία and βραδύτης ("quiet" and "slowness": 71.3–7).

Conversely, the Athenians (73–78) first seek to dispel the insinuation that they are being tried in a law court and to restore the fundamentally deliberative character of the meeting.[36] Much of the rest of the speech seeks to demonstrate the power of the city that they would come up against (focusing on their exploits during the Persian wars). Their key argument is that they succeeded where the Spartans had failed (namely, to lead the Greek world after the Persian Wars) and therefore deserve their position of power. Two *gnōmai* (76.2, 3: "… but since it has always been a rule that the weak should be ruled by the strong; after all, we think we deserve our position … Those who deserve praise are the people who have followed their human nature to rule others but then

35 69.1–2: οὐ γὰρ ὁ δουλωσάμενος, ἀλλ' ὁ δυνάμενος … φέρεται. οἱ γὰρ δρῶντες βεβουλευμένοι … ἐπέρχονται.

36 For this speech, see Raubitschek (1973).

demonstrate more justice than they have to in their position of power"[37]) reinforce the Athenian rhetoric of justified superiority before they return to the issue of justice; two further *gnōmai* lend further support to the projection of their brutally honest, assertive, imperialistic *ēthos* ("it seems that people resent injustice more than being treated harshly … oppressed by someone who is superior"; "for the longer a war lasts, the more likely it is for chance events to determine its course; we are both equally unable to control these and have to face the danger of an uncertain outcome.").[38] The Athenian speech thus adds a new, radically different layer to the portrayal of Athenian character by the Corinthians.

4 Speeches by Individuals in Assembly Debates

Thucydides presents opposing speeches by individuals delivered in the context of Assembly debates: two of them are placed in Athens (the Mytilenean debate in 427 and the *Redetrias* in 415; see 4.1 and 4.2 below), one in Sparta (between King Archidamus and Sthenelaidas in 432), one in Syracuse (in 415: 6.32–41), and one in the Assembly of Camarina (in 415: 6.76–87). On the one hand, these debates help shed light on moral and political issues relevant to the development of the narrative of the *History*, while, on the other, they illuminate the *ēthos* of key individuals from different Greek city-states on opposite camps in the war as performed in an Assembly context, the traits that would have made a speaker persuasive.[39]

4.1 *Cleon vs. Diodotus: the Athenian Assembly Debate on the Fate of Mytilene (427)*

The first Athenian debate of Thucydides' *History* (3.37–48) marks the first appearance of Cleon, the son of Cleainetos, in the narrative of the war and displays his character through his arguments. Note that Thucydides prefaces his speech by stating that he was "the most violent and persuasive individual

37 76.2–3: … αἰεὶ καθεστῶτος τὸν ἥσσω ὑπὸ τοῦ δυνατωτέρου κατείργεσθαι, ἄξιοί τε ἅμα νομίζοντες εἶναι … ἐπαινεῖσθαί τε ἄξιοι οἵτινες χρησάμενοι τῇ ἀνθρωπείᾳ φύσει ὥστε ἑτέρων ἄρχειν δικαιότεροι ἢ κατὰτὴν ὑπάρχουσαν δύναμιν γένωνται.

38 77.4: ἀδικούμενοί τε, ὡς ἔοικεν, οἱ ἄνθρωποι μᾶλλον ὀργίζονται … καταναγκάζεσθαι. 78.2: μηκυνόμενος γὰρ φιλεῖ ἐς τύχας τὰ πολλὰ … κινδυνεύεται.

39 Thucydides has chosen not to present the speeches of other participants in these Assembly debates in order to lend more emphasis on individuals he considers important for the development of his *History*.

with the people" of Athens.[40] It is only later that we hear of his actions on the battlefield and his rejection of the Spartan overtures in 425 (4.21–22). Cleon represents the ugly face of imperialism, whilst Diodotus' presents a more palatable aspect of Athenian imperialism. Although these two speeches respond to each other in this debate, Cleon's argumentation and the representation of his *ēthos* are also meant to be understood by comparison to Pericles' speeches in Books 1 and 2.

Two features of Cleon's speech bearing on his characterisation are worth highlighting: first, his speech is heavily laden with *gnōmai*.[41] First, by employing *gnōmai* Cleon wishes to come across as the wise and experienced advisor of the city, yet he exaggerates this key element of logical argumentation. Second, whilst he deplores the highly rhetorical character of Assembly debates and the excessive focus on intricate arguments, his own speech is an example of the very type of speech he was castigating: the structure and complexity of his arguments belies his attack on the use of highly wrought arguments in the Assembly.

Cleon introduces his speech by ruminating on the ills of democracy and the problems of running an empire. The arguments he uses in support of his thesis support the initial impression of a ruthless character as his wording (τυραννίδα, ἀρχήν, ἀρχομένους, ἰσχύι) also reeks of aggression, pride, and ruthlessness. His arguments stress the character traits the Athenians ought to demonstrate (note the antithetic couples of moral and intellectual traits: σωφροσύνη—ἀκολασία, φαυλότεροι—ξυνετώτεροι, σοφώτεροι—ἀμαθέστεροι).

Self-characterisation is mostly implicit in Cleon's speech, except where he stresses his constancy in resisting a review of the original decision to punish Mytilene (38.1: ἐγὼ μὲν οὖν ὁ αὐτός εἰμι τῇ γνώμῃ). At the same time, his characterisation of opponents who favour holding a second debate is harsh but allusive. He castigates them as relying on the power of fine oratory or financial gain to mislead the people (38.2). This leads to his famous condemnation of the theatricalisation of Athenian Assembly debates with their excessive emphasis on fine argumentation (38.3–7). He thus creates suspicion towards those who will speak next (i.e. Diodotus) and distances himself from such corrupt models of public speaking. The Mytileneans are portrayed as hybristic due to their unexpected success (note the use of *gnōmē* at 39.4; cf. 39.5) and are shown to deserve a harsh punishment. As Cleon moves towards the end of his speech (40.2–7), he brings together the themes of justice (δίκαιος, τὰ δίκαια, δικαιώ-

40 3.36.6: βιαιότατος τῶν πολιτῶν τῷ τε δήμῳ παρὰ πολὺ ἐν τῷ τότε πιθανώτατος.

41 Cleon uses ten *gnōmai*, double the number of *gnōmai* used by Diodotus.

σεσθε)[42] and expedience (ξυμφόρως, τὰ ξύμφορα) and their opposites (ζημία, ἀδικία)[43] and concludes with a succession of imperatives that reiterate the need to punish and make an example of the Mytileneans (40.5–7).

Conversely, Diodotus is more explicit in his personal attack on Cleon's character, although he, too, starts allusively when refuting Cleon's attack on the elaborate rhetoric of Assembly debates. Like Cleon, Diodotus, too, uses intellectual vocabulary[44] and the allegation of private gain to characterise those who attack democratic debates (42.2–3; cf. also 43.1). He uses a *gnōmē* to imply that Cleon is trying to bully any potential speakers into silence ("the good citizen, instead of trying to intimidate those opposing his speech …"[45]), thus enhancing the negative impression of Cleon's character already formed by his own speech. He proposes a different model of Assembly debates and a different type of public speaker. Unlike Cleon, he does not use *gnōmai* frequently, uses more hypothetical syllogisms (εἰ μὲν …, εἰ δὲ …), and his arguments are shorter and presented in more intelligible chunks: when he claims that he does not wish to act as supporting speaker for or as prosecutor of the Mytileneans (44.1), he uses a γὰρ sentence to elaborate his initial statement; this is followed by a hypothetical syllogism (ἤν τε γὰρ … ἤν τε καὶ …), which then leads to a statement of opinion confirming the deliberative character of the debate ("I believe that our deliberation concerns the future rather than then present").[46] He thus clearly distances himself from the model of oratory represented by Cleon.

Like Cleon, Diodotus, too, wishes to come across as a wise and reliable adviser of the people but his overall tone and argumentation appear less arrogant than Cleon's. He successfully turns the tables on Cleon when he presents his own arguments as useful[47] thus responding to what the audience in the Assembly need to hear and fulfilling his own mission as a public speaker and contrasts them to the well-wrought arguments of Cleon. He explains at length why the death penalty is ineffective and should be avoided, thus striking a milder, more moderate tone than Cleon. He counters Cleon's argument about combining justice and expedience by asserting that they are incompatible

42 Terms denoting justice/fairness and their opposites are attested eight times in Cleon's speech.

43 Terms denoting expedience/usefulness and their opposites are attested four times in his speech.

44 Terms denoting intellectual traits occur twelve times in Diodotus' speech, whist terms relating to justice appear nine times.

45 42.5: χρὴ τὸν ἀγαθὸν πολίτην μὴ ἐκφοβοῦντα τοὺς ἀντεροῦντας …

46 44.3: νομίζω δὲ περὶ τοῦ μέλλοντος ἡμᾶς μᾶλλον βούλευεσθαι ἢ τοῦ παρόντος.

47 Terms denoting utility/expedience occur eight times in his speech.

(47.5) and maintains that it is more expedient to be wronged willingly than to use justice to destroy those who should not be destroyed. The alternative means of security he proposes is relying on "vigilance" rather than on the "rigour of the law".[48] While not foregoing the need for safeguarding the city and its interests, Diodotus presents a more moderate way of dealing with the secession of their former allies. The types of arguments he uses, their structure, and balance reflect positively on his *ēthos*. And his speech is the one that succeeds on this occasion.

4.2 *Nicias vs. Alcibiades in the Athenian Assembly Detabe before the Expedition to Sicily (415)*

The Athenian Assembly debate between Nicias and Alcibiades on the eve of the Sicilian expedition (6.9–23) is unusual in that Thucydides has Nicias deliver a second speech after Alcibiades' response to Nicias' first speech. Unlike Cleon and Diodotus who had not featured in Thucydides' narrative until the Mytilenean debate, both Nicias and Alcibiades are already well-known[49] and Thucydides takes the opportunity to develop their characterisation.

Thucydides pits experience versus youth and this contrast reflects the composition of the audience. Whilst Nicias is the war-hardened general, Alcibiades is an aspiring, aristocratic general. Obviously, both speakers want to come across as wise, experienced, and reliable as advisers of the *dēmos* and, like other Thucydidean speakers, use *gnōmai* to that effect (Nicias employs four, while Alcibiades employs six). However, their rhetorical strategies and placement of their respective arguments are different and this reflects on their *ēthos*.

Nicias' promotes his *ēthos* at the start of his first speech after first questioning the very objective of the Assembly meeting (9.1). He states, rather modestly, that he has gained honour through the war and is not one to fear about his personal safety[50] or that of his property and further stresses this statement through an extended *gnōmē* identifying him with the ideal of the *agathos*

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48 46.4: … καὶ τὴν φυλακὴν μὴ ἀπὸ τῶν νόμων τῆς δεινότητος ἀξιοῦν ποιεῖσθαι, ἀλλὰ ἀπὸ τῶν ἔργων τῆς ἐπιμελείας.

49 Nicias, son of Niceratus: 3.51, 3.91, 4.27–28, 42–45, 53–57, 119, 129–133, 5.16.1 ("the most successful Athenian general of his day" … "… [Nicias] wanted to preserve his good fortune while he was still undefeated and held in high regard … and to be known in future time as a man who never brought failure on his city"), 5.43–46, 83; Alcibiades, son of Cleinias: 5.43.2 ("… still of an age which would be thought young in any other city, but respected for the distinction of his family …"), 45.

50 His *ēthos* comes across through the modest expression of his "fearlessness": ἧσσον ἑτέρων περὶ τῷ ἐμαυτοῦ σώματι ὀρρωδῶ … ("… I fear less than others about my own life …": 9.2).

politēs.[51] The rest of his introduction reinforces his resolve to tell the truth to a hostile audience that is not prepared to listen.

In the rest of his speech, Nicias seeks to demonstrate the absurdity of the decision to send an Athenian force to Sicily, which is stressed by the antithetic structure of his arguments throughout the "proof section" (10–12). Nicias makes a robust, logically founded, and fact-based case against undertaking an expedition to Sicily, even though he had been elected as one of the three generals to lead it. The case for prudence is supported by clearly structured propositions, which the audience should be able to connect with and understand. Many of the arguments start with a clearly stated proposition (φημὶ γαρ …: 10.1), are followed by an analysis of the situation regarding the peace-treaty, and culminate in what seems to be a concluding statement (ὥστε χρὴ σκοπεῖν …: 10.5). This, in fact, introduces a new argument on the irrationality of the decision to offer help to the Egesteans given their failure to subdue the Chalkidians and other defectors. His arguments proceed step-by-step in a way that would have helped the audience engage with them. Another result clause introduces a strong statement of what is at stake in this case (11.7: "our struggle will not be about the Egesteans in Sicily, these barbarian men …").[52] The projection of his *ēthos* as a modest but trustworthy politician would have benefited from the fact that his argumentation is not too elaborate (contrast the argumentation in the Mytilenean debate) thus helping the audience to understand it, and, hopefully, to trust him. However, Nicias' speech fails. His unexceptionable logical arguments were ultimately ineffective and his *ēthos* not persuasive.

Alcibiades, for his part, seeks to refute Nicias' arguments. Unlike Nicias, whose *ēthos* is presented primarily through statements of opinion, Alcibiades argues at length on why he claims to be the right person to lead the expedition (16.1–17.1).[53] A bold assertion is followed by three γάρ- statements (16.1–2), which are capped by another strong statement of opinion (16.2: νόμῳ μὲν γὰρ τιμὴ … ὑπονοεῖται). It is worth noting that he links directly the projection of his *ēthos* to the power of his rhetoric and, more specifically, his effective argumentation in diplomatic negotiations in the recent past (17.1). In the "proof" section of his speech (17.2–18.3), Alcibiades' argues that the Athenians should not change their minds about the expedition to Sicily. He projects his *ēthos* as

51 6.9.2: … νομίζων ὁμοίως ἀγαθὸν πολίτην εἶναι ὃς … προνοῆται ("because I believe that the man who does take care of his own safety and his own property").

52 ὥστε οὐ περὶ τῶν ἐν Σικελίᾳ Ἐγεσταίων ἡμῖν, ἀνδρῶν βαρβάρων, ὁ ἀγών …

53 Alcibiades' character is also portrayed through other means, such as his excessive use of personal pronouns and his preference for paratactic over subordinate constructions to convey an impression of clarity and simplicity (see Tompkins 1972: 204–214).

a reliable advisor despite his youth by foregrounding his good intelligence on Sicilian matters. He uses an argument from probability (καὶ οὐκ εἰκὸς … τρέπεσθαι), which is followed by statements on the available intelligence and a restatement of Alcibiades' knowledge (ἐξ ὧν ἐγὼ ἀκοῇ αἰσθάνομαι). An argument from experience (οἱ γὰρ πατέρες ἡμῶν …) leads to the conclusion the Athenians should place their trust on their navy on this occasion, too. The stated conclusion takes the form of a rhetorical question (18.1: "is there any reasonable argument to make us hold back or to offer any excuse to our allies for not helping them?").[54]

Despite Alcibiades' off-puttingly assertive exordium, his *ēthos* still comes across as that of the knowledgeable policy adviser regardless of his young age.[55] He, too, draws on the same arsenal of logical arguments but employs more *gnōmai* and paradigms from the early fifth century thus making up for his age-deficit in the eyes of the Athenians and assuming an aura of authority. Although Nicias' logical argumentation should have been easy to engage with, it comes across as more cerebral than that employed by Alcibiades. Did Nicias' arguments fail because they were not as persuasive as those used by Alcibiades or rather because they projected *ēthos* that was not persuasive under the circumstances compared to the combined effect of Alcibiades' arguments and *ēthos*? Did Alcibiades' use of logical arguments and good intelligence make him persuasive despite his obvious arrogance or did his overconfidence appeal to a majority of Athenians at the time?

5 Speeches by Individuals in Assemblies/Conferences

5.1 *Pericles in the Athenian Assembly* (*432 and 430*)

The finest of Athenian politicians is delivering the very first Athenian Assembly speech in Thucydides' *History* (1.140–144). The occasion was the meeting called after the Spartan ultimatum in 432/1. The historian informs us that many speeches had already been delivered before Pericles took to the *bēma* and gave his rousing speech, which seeks to encourage the Athenians to reject the Spartan ultimatum and prepare for war. Pericles successfully combines the projection of his own character with a solid political position at a critical juncture for the city. He stresses his constancy right at the start (140.1:

54 … ὥστε τί ἂν λέγοντες εἰκὸς ἢ αὐτοὶ ἀποκνοῖμεν ἢ … μὴ βοηθοῖμεν;

55 Cf. the projection of his *ēthos* in his speech before the Spartan Assembly in 6.89–92 (another *lysis diabolēs* but this time before a hostile audience).

"men of Athens, my opinion remains the same as it has always been, namely that we should not give in to the Peloponnesians"),[56] and the impression of his constancy and reliability are confirmed by the rest of his speech. At the same time, he demonstrates diplomatic experience, a deep understanding of Peloponnesian weaknesses (141.2–143.3: illustrated by three *gnōmai*) and Athenian strengths (143.3–5: accompanied by one *gnōmē*). The use of six *gnōmai* in his analysis reinforces his self-characterisation as a wise and trustworthy leader who seeks to engage the intellect of his audience rather than intimidate them through his highly sophisticated argumentation (e.g. 143.5: "property is the product, not the producer of men"). He also uses a number of hypothetical syllogisms to demonstrate that the Spartans cannot wage war at sea and are unlikely to succeed because of their lack of financial resources (142.2, 143.1). Further hypothetical syllogisms seek to demonstrate Athenian superiority in terms of resources and defence strategy (e.g. 143.5: "if we were an island ... so we should now think of ourselves as the closest approximation to islanders ..."). At the same time, his frequent use of the first-person plural reduces the distance between speaker and audience and engenders unity; it thus adds to the morale-boosting effect of the speech and the implicit characterisation of Pericles as a reliable and, consequently, persuasive leader. The speech is brought to a close with arguments from past experience and past Athenian glories thus underlining the belief that success in the past can lead to success in the future.[57] Pericles' emphasis on action is undergirded by cogent and lucidly presented arguments which in turn project the persuasive *ēthos* of the trustworthy statesman.

This first speech is counter-balanced by Pericles' second speech (2.60–64), which takes place in a very different context in 430. As Thucydides points out (2.59), the Athenians were now desperate and resentful at their present sufferings and Pericles succeeds in dealing with their negative emotions. This time his tone is strikingly different, whilst the impression of his *ēthos* is the same as in his first speech. Pericles is more personal, goes into details about his *ēthos* as he responds to criticism, yet he still comes across as the knowledgeable, wise, and dependable leader in the midst of a crisis. His constancy is stressed again and contrasted to the Athenians' volatility (61.2). His speech gives the reader an insight into why he has been successful at persuading the people and highlights the key qualities of the effective and reliable leader: he does promote his own superiority yet his superior intellect is not sufficient in itself

56 τῆς μὲν γνώμης, ὦ Ἀθηναῖοι, αἰεὶ τῆς αὐτῆς ἔχομαι, μὴ εἴκειν Πελοποννησίοις ...

57 Cf. similar use of arguments about the past in Alcibiades' speech (6.17).

(60.5);[58] this is coupled with his ability effectively to communicate his ideas to the people; finally, he is loyal and incorruptible (60.6). Thus, in this second speech Pericles combines a *lysis diabolēs* with a positive message about the city and the war. This speech employs the same number of *gnōmai* (six) as in his previous speech; combined with the rhetoric of civic unity and Athenian superiority, these *gnōmai* engender confidence in the wartime leader.

Through these two speeches, Thucydides has Pericles himself "perform" his *ēthos* on the *bēma* of the Athenian Assembly. The same types of arguments are used (especially *gnōmai*) to reinforce the impression of the reliable and persuasive leader. The impression of Pericles' *ēthos* is enhanced through the obituary of the great Athenian politician (65.5–10) that caps his last recorded speech.

5.2 *Hermocrates' Speech at the Gela Conference (424)*

The background to Hermocrates' speech (4.59–64) is the truce between Camarina and Gela and the attempt to unite the Greeks of Sicily in 424. The Syracusan politician adopts supra-local rhetoric in order to facilitate reconciliation on the island. He starts with an axiomatic statement about war ("no one is forced to take part in it by ignorance nor is kept out of it by fear …")[59] which is followed by two hypothetical statements and the implicit conclusion that the conference should lead to a fair settlement and reconciliation to avoid war. His knowledge of Athenian power is excellent and is built into his argumentation: a couple of hypothetical statements lead to an argument from probability stressing that Athens is likely to attack them if the Sicilian Greeks do not reconcile ("what will happen most likely is that when they see us worn out they will come here with a larger force and seek to subdue us").[60] The next few paragraphs stress the need for reconciliation[61] and explain why Athens is a real danger for the Sicilians. A long rhetorical question stresses the benefits of peace (62.2) and proceeds to deal with the question of a just war or adequate resources. An argument from past history highlights the futility of those seeking revenge and leads to a couple of *gnōmai* (62.4: "for punishment is not necessarily successful just because a wrong has been committed and strength cannot be relied upon simply because it is confident regarding the future outcome"; "what counts in

58 Contrast Alcibiades' promotion of his own *ēthos*, which is based on his (aristocratic) credentials and successes to-date (6.16.1–3).

59 4.59.2: οὐδεὶς γὰρ οὔτε ἀμαθίᾳ ἀναγκάζεται αὐτὸ δρᾶν … πρὸ τοῦ αὐτίκα τι ἐλασσοῦσθαι.

60 4.60.2: … εἰκός, ὅταν γνῶσιν ἡμᾶς τετρυχωμένους, … ποιεῖσθαι.

61 Contrast the conclusion of Cleon's speech in the Mytilenean debate where he had stressed the need to punish and make an example of the Mytileneans (3.40.7).

the long run is the incalculable factor of the future").[62] He concludes his argument with a reminder of the uncertainty of future (another *gnōmē*) and uses the rhetoric of kinship (e.g. 64.3: "it is not shameful to make concessions to one's own kin"[63]) to call upon the Sicilian Greeks to put aside their differences.

The fact that Thucydides does not present any other speeches from that conference and the double statement of Hermocrates' success at persuading the delegates (58.1 and 65.1) is a tacit endorsement of his effectiveness as an orator. Thucydides probably wanted to parallel Pericles' figure in Sicily and to pave the way for Hermocrates' central role in Books 6 and 7 (especially his speeches at 6.33–34, 76–80). Although his character is not portrayed in as much detail as that of Pericles, some of the character traits that resurface in the 415 debate at Syracuse (6.33–34) appear for the first time (e.g. reliability, command of information/details, knowledge; rebuking of fellow citizens), although the context here is not adversarial thus affecting the presentation of arguments and the impression of his character created by his arguments for unity.

Conclusion: Cast of Characters and Performance of Arguments

It is evident from the analysis of Assembly speeches in Thucydides that context plays an important role in the presentation of arguments and the projection of individual characters. Thucydides did have a hand in shaping the context to enhance the importance of a debate or an individual's speech. His cast of characters is rich and, although characters are not as vivid as those in Herodotus, they are probably deeper at least in terms of *dianoia*. And whilst argumentation by individual speakers also sheds light on complex issues such as historical causation and motivation, its key objective remains to paint credible characters. The context of Assembly debates sets the scene for individual verbal performances dominated by different strategies of logical arguments. Even if Cleon was wrong to condemn the Athenian culture of deliberative oratory, speeches by individuals such as Pericles, Athenagoras, Diodotus and Nicias suggest that logical arguments, more or less sophisticated, were central to oratorical performances in the Assembly. And modern readers of Thucydides, just like ancient audiences, can understand more about the speakers themselves by enjoying their performances of logical argumentation.

62 τιμωρία γὰρ οὐκ εὐτυχεῖ δικαίως ... οὐδὲ ἰσχὺς βέβαιον ... τὸ δὲ ἀστάθμητον τοῦ μέλλοντος ὡς ἐπὶ πλεῖστον κρατεῖ ...

63 οὐδὲν γὰρ αἰσχρὸν οἰκείους οἰκείων ἡσσᾶσθαι.

CHAPTER 8

Elite Rhetoric and Self-Presentation: Metellus Numidicus Returns

*Henriette van der Blom**

Introduction

How did Roman politicians perform in public when challenged on their reputations and careers? What were the parameters for this communication with the public and how did politicians navigate these parameters? In this chapter, I present a case from a Roman republican setting, which illustrates some of the tactics adopted to tackle a potentially career-damaging discharge. The case in question is the replacement of Q. Caecilius Metellus in 107 B.C. on the African command with his former subordinate officer, Gaius Marius, and Metellus' return to Rome to face public criticism of his conduct as general.

I shall focus on the textual record of Metellus' oratorical performances in the *contio* because they form part of the great political debate at the time, namely, the tribunician challenge of the senatorial dominance in foreign politics and senatorial corruption more generally, and therefore can throw further light on how this debate played out in the public sphere of the *contio*. Secondly, because these deliberative speeches exemplify some of the performative aspects of public oratory in Rome discussed in current scholarship.[1] And finally, because the textual record of his oratory, albeit limited and fragmentary, illustrates well the parameters for communication available to Metellus and the ways in which he operated within a common set of values and expectations of how a Roman senator responded to public criticism.

* I should like to thank the editors of the volume for the invitation to contribute in spite of not having delivered a paper at the conference from which this volume arises. Thanks are also due to audiences in Chicago and Nottingham, who gave helpful feedback to earlier versions of this chapter. The chapter has also benefited from discussions with John Rich, Ida Östenberg and Carsten Hjort Lange, to whom I am most grateful. Finally, this chapter was inspired by my work on the *Fragments of the Roman Republican Orators* project and discussions with Catherine Steel, who also offered feedback on early drafts of this chapter.

1 Most prominently by Hölkeskamp (1995), (2013); Morstein-Marx (2004); Flaig (2004); Jehne (2011), (2013).

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The main questions to be pursued are: how did Metellus perform in his public addresses in the aftermath of his discharge? What were the reasons behind his grant of a triumph in spite of not finishing the war and being replaced on the command? And, what does his handling of his discharge tell us about the boundaries of public oratorical performances in republican Rome and the unwritten rules of republican politics?

1 Setting the Stage

First, however, I shall briefly set the stage for Metellus' performance, because it will allow a better understanding of the parameters under which Metellus spoke. Quintus Caecilius Metellus came from a privileged background in an elite family which had been highly successful for generations in both politics and military commands. He had lived up to the family history of success, obtaining and fulfilling both civic and military public offices. In 109 B.C., his election to the consulship led the way to his military command in the war against the Numidian Jugurtha in North Africa. In the same year, a special inquest into the conduct of Metellus' predecessors in the war resulted in the conviction and exile of several high-ranking generals and senators.[2] The conduct of the new commander was therefore under close scrutiny.

Metellus did well as commander, training his soldiers considerably better than his immediate predecessor, winning several battles, defeating the main enemy Jugurtha in two battles although not capturing him, and advancing into Numidian territory.[3] So far, it seems that there was nothing to criticise but only to praise. The dramatic change came when Metellus' officer, Gaius Marius, asked for leave to go to Rome and stand for the consulship of 107 B.C. When Metellus showed his reluctance—even ridicule at the thought if we are to believe the two major narrators of this event, Sallust and Plutarch[4]—Marius started a campaign to both smear Metellus' reputation and advance his own chances of election. Through the allegation that Metellus artificially prolonged the war in order to remain in command, Marius managed to position himself with the soldiers in the army, the Roman businessmen in Africa, and the tribunes of the plebs in Rome as the perfect candidate for the consulship and, as a consequence, also as the perfect candidate for the command in Africa because

2 See Alexander (1990) nos. 52–57 for details. Flower (2010) 105–111 gives the broader background.

3 See sources in *MRR*.

4 Sall. *Iug*. 64; Plut. *Mar*. 8.3.

he promised to finish the war swiftly and capture the enemy Jugurtha. And so Marius was elected to the consulship of 107 B.C.[5] Although the senate had shortly before prolonged Metellus' command, the tribune T. Manlius Mancinus challenged the senatorial prerogative in foreign policy by passing a bill in the plebeian legislative assembly to transfer the African command from Metellus to Marius.[6] The date of this vote is not certain, but the tribune is likely to have proposed the law immediately after taking up office on 10 December 108 B.C. or shortly afterwards.

Metellus had to return to Rome, stripped of his command and succeeded by Marius, that is, a general of low birth who had been his subordinate officer. Moreover, Metellus faced serious allegations of prolonging the war unnecessarily.[7] The fact that several of his predecessors in the war had been convicted of corruption and treasonable dealings with Jugurtha and sent into exile may also have crossed Metellus' mind.[8] Indeed, Sallust argues that when the news of the transfer of command to Marius reached Metellus by letter, he was more upset than what was right and proper, crying and having no control over his tongue. He could not bear to hand over the command in person, but left a legate to face Marius.[9] Sallust and Plutarch clearly relishes the drama of the situation and possibly exaggerates it for entertainment, but the fact that they depict Metellus' reaction in this way, makes it evident that the situation was considered humiliating to Metellus. Indeed, for a man with such an illustrious ancestry, the humiliation extended to his family.

2 Metellus Returns

Metellus returned to Rome at some point in 107 B.C., but stayed outside the *pomerium* in order to keep his *imperium* intact for a possible triumph.[10] If the

5 Cic. *Off.* 3.79; Sall. *Iug.* 64–65, 73; Plut. *Mar.* 8.5. On the finer details of this campaign, see Yakobson (1999) 13–19; Tatum (2013), and on the political mood and the political context of Marius' arguments, see Yakobson (2014).

6 Polyb. 6.13. Cf. Pina Polo (2013); Steel (2013a) 70–71.

7 Inferred from the criticism brought forward by Marius and his supporters in Rome in the run up to Marius' election to the consulship: Sall. *Iug.* 64.5; Plut. *Mar.* 8.5.

8 The Mamilian inquest: Sall. *Iug.* 40; Cic. *Brut.* 128.

9 Sall. *Iug.* 82.2, 86.5; Plut. *Mar.* 10.1.

10 Vervaet (2014) 78–93 challenges the scholarly consensus that a general would stay outside the *pomerium* in order to keep his *imperium* intact; rather, Vervaet argues, the general sought to keep his *auspicium* intact.

transfer was effected in early 107 B.C., it is likely that Marius went to Africa to arrive at the start of the fighting season in the spring.[11] Metellus is to have returned to Rome as soon as he heard about the transfer (and possibly before Marius arrived in Africa), so he will probably have arrived in Rome during the spring or summer of 107 B.C.

In Rome, Metellus faced the criticism which had resulted in his dismissal: before his departure, Marius had personally argued Metellus' incompetence and corruption at public meetings in Rome.[12] We can easily imagine that the rhetoric of the tribune T. Manlius Mancinus, who had passed the bill of the transfer of the African command to Marius, was an extension of Marius', namely criticism of Metellus' command and praise of Marius' potential. Already before Metellus' return to Rome, Marius' rhetoric against Metellus reverberated in Rome. Once back in Rome, Metellus faced the challenge of keeping up his public reputation in spite of the humiliating discharge and the hostile rhetoric of Marius and the tribune T. Manlius.

While both Marius as consul and T. Manlius as tribune had the right to call public meetings and address the people at these, Metellus' status as proconsul with *imperium* meant that he could not call a civic *contio* meeting where he could express his version of the events. Instead, he would have to wait until a magistrate would call a meeting and summon him to address the people at a public meeting held outside the *pomerium*, and this magistrate could be either a friend or an opponent.[13] In this situation of a high-profile discharge and public criticism, Metellus could expect to be asked to explain himself at one or more public meetings, but he could not predict when it would happen or who would summon him. Moreover, he could not predict the reaction of the audience, although the audience may have taken the cue from the chair of the meeting, whether friendly or hostile to Metellus.

The evidence suggests that Metellus did get access to a public audience from two passages from one or two speeches delivered by Metellus in the *contio*. Although these passages are difficult to date with certainty to 107 B.C., the content suggests that Metellus tried to defend himself against heavy criticism and we know that Metellus faced exactly such criticism after his return to Rome

11 Sall. *Iug.* 86.4. Chantraine (1959) 35–36 and Paul (1984) xxiii, 218 too argue for spring.

12 Whether in speeches before or after his election to the consulship is unclear; Plutarch and Cicero argues before, while Sallust presents Marius' grand speech as his first piece of public oratory as consul (Plut. *Mar.* 8.5; Cic. *Off.* 3.79; Sall. *Iug.* 84–85).

13 *Contiones* outside the *pomerium* was often held in the *circus Flaminius*, a short walk from the Forum: Pina Polo (1989) 185–187; Morstein-Marx (2004) 59–60. See Pina Polo (1989) 43–53; Morstein-Marx (2004) 38–40 for the right to call a *contio*.

from Africa.[14] In these two passages (which we shall come to in a moment), Metellus is described as defending himself against the criticism of a tribune called C. or G. Manlius.[15] We have no other information about a tribune of that name, but we do know of T. Manlius Mancinus (tr. pl. 107 B.C.), who was the tribune proposing the bill to transfer the African command from Metellus to Marius. Although it cannot be proven that these Manlii are the same person, it is likely since the names are so similar (and a *praenomen* can easily be mixed up in the transmission),[16] they are both tribunes, and they are both clearly on Marius' side against Metellus. In the following, the C./G. Manlius in the two sources to Metellus' speech(es) shall be taken as the same person as the T. Manlius Mancinus in Sallust's version, and simply be called Manlius.[17]

The two passages were transmitted by the second century AD collector of miscellaneous material, Aulus Gellius, and the 6th century AD grammarian Priscian. Before going into the details of the passages, it is necessary to consider briefly the transmission and authenticity of these passages. Gellius' general method of work suggests that he used a written version of the speech and that he quoted from it more or less verbatim.[18] Moreover, Gellius knew Metellus' written works (including speeches) well because he quotes from five different works.[19] For a grammarian like Priscian, who was quoting text to illustrate linguistic points, the quotation had to be correct in order to make sense, at least correct in terms of the text extant at the time of quoting. The crucial moment in this transmission history seems therefore not to be at the point of the quoting author, but rather at the point when the speech was written down (and possibly when it was copied). Although oratorical passages are sometimes accompa-

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14 The internal evidence of the two passages does not rule out that they were delivered at a different point in time, for example, during Metellus' censorship in 100 B.C., but only if we discard the identification of the tribune T. Manlius Mancinus (107 B.C.) with C./G. Manlius criticising Metellus (see the following discussion).

15 Gell. *NA* 7.11.2 (*C. Manlium*); Priscian (Keil, Grammatici Latini vol. 2, p. 382) (*G. Manlio*). Both C. and G. stood for Gaius.

16 Indeed, the *praenomen T* in Sall. *Iug*. 73 is recorded in only two of the primary manuscripts (PA) but not in other such (CBNK).

17 Most scholars do indeed consider them to be the same person: Münzer *RE* Manlius 61, cf. Manlius 16; Broughton in *MRR* I, 551; Paul (1984) 192; Pina Polo (1989) 21, App. A. no. 205; Doblhofer (1990) 46–47.

18 Holford-Strevens (1988) 47–58, 143–145; Heusch (2011) 117–162.

19 Gell. *NA* 1.6 (two passages), 7.11.2, 12.9.4, 15.13.6, 15.14.1–2, 17.2.7. McDonnell (1987) 87 with n. 22 argues that Gellius most likely used a collection of Metellus' speeches which may have been edited by Metellus' friend L. Aelius Stilo, the *praeco* (cf. Fronto 15.12–17 with van den Hout (1999) 41).

nied with information about their transmission from oral version to written text, these passages are not. We are left to consider circumstantial evidence instead. There is no reason to doubt that Metellus did deliver speech(es) in the *contio* after his return from Africa. Moreover, the situation in which Metellus delivered his speech(es) was important enough for both Metellus and his political opponents to want to record delivered speeches; it is therefore probable that the speech(es) were written down shortly after delivery in an attempt to record the event and provide a version of the event. We know from another passage in Gellius that Metellus had, on at least one other occasion, written down and circulated a version of a (forensic) speech.[20] It is therefore possible that Metellus also wrote down a version of his speech(es) delivered after his return to Rome. We cannot know how close the written version(s) was to the delivered, or whether Metellus may have adjusted the delivered version(s) to the people to the different audience of the elite in the written version; even for the abundant Ciceronian material, much is still disputed.[21] But for the sake of argument in this chapter, I take the premise that we can use these passages and another passage from Gellius as reflections of what Metellus said at these occasions.

Here, I shall analyse these passages with regard to Metellus' self-presentation and communication of his message to the people. The first passage comes from Gellius:

> uerba haec sunt Metelli aduersus C. Manlium tribunum plebis, a quo apud populum in contione lacessitus iactatusque fuerat dictis petulantibus: nunc quod ad illum attinet, Quirites, quoniam se ampliorem putat esse, si se mihi inimicum dictitarit, quem ego mihi neque amicum recipio neque inimicum respicio, in eum ego non sum plura dicturus. nam cum indignissimum arbitror, cui a uiris bonis benedicatur, tum ne idoneum quidem, cui a probis maledicatur. nam si in eo tempore huiusmodi homunculum nomines, in quo punire non possis, maiore honore quam contumelia adficias.
>
> These are the words of Metellus from his speech against the tribune of the plebs Gaius Manlius, by whom he had been provoked and taunted in impudent terms in front of the people at a *contio*: Now, as for him,

20 Gell. *NA* 15.14.1–2.

21 Powell and Paterson (2004) 52–57 sum up the scholarly discussion on Cicero's speeches and offer a conclusion.

> citizens—who thinks he will seem greater if he repeatedly says that he is my enemy, whom I do not accept as a friend and do not take account of as an enemy—I shall not say anything more. For I consider him unfit to be praised by good men and not even worthy of criticism from decent people. If you name a man of this kind, against whom you cannot take action, you honour rather than abuse him.[22]

Rhetorically, this passage is characterised by well-balanced clauses (for example, *neque amicum recipio neque inimicum respicio* and *cui a uiris bonis benedicatur … cui a probis maledicatur*).[23] This suggests a speech prepared in advance of the meeting. Whether Gellius refers to a public meeting held by Manlius before or after Metellus' return to Rome does not matter. In any case, Metellus tried to respond to Manlius' criticism by using a standard line of unworthiness of his opponent.[24] Although Gellius read this as an example of philosophical continence under attack, Metellus' argument was also a common rhetorical strategy to undermine his opponent's attack. The avoidance of the name of the opponent considered unworthy of mention can be paralleled in other instances of Roman senators avoiding the name of their opponent.[25] Moreover, the moralising tone was regularly adopted in Roman oratory.[26]

The second brief passage, preserved by Priscian, gives us another glimpse into Metellus' performance:

> Metellus Numidicus in oratione, qua apud populum G. Manlio tribuno plebis respondit: nam ut aliis plerumque obuenienti magistratu ob metum statuae polliceantur …

> Metellus Numidicus, in the speech in which he responded to Gaius Manlius, tribune of the plebs, in front of the people: For statues are usually promised by others out of fear to a magistrate who happens to arrive …[27]

22 Gell. *NA* 7.11.2. Translations are my own unless otherwise indicated.

23 Cf. Bardon (1952) I. 100–101 for discussion of this passage.

24 There is a parallel in Cicero's attack on Vatinius: Cic. *Vat.* 1.

25 Gaius Gracchus' unsuccessful usage against L. Calpurnius Piso Frugi in 123 B.C. (Cic. *Font.* 39; Schol. Bob. in Cic. *Flacc.* p. 96, 26. (Prisc. *Grammatici Latini* [Keil] vol. 2, p. 386, 3; Isid. *Etym.* 2.21.4.)) and Cicero's multi-faceted tactics of not naming Clodius in his speeches after his return from exile; cf. full discussion in Steel (2007).

26 Edwards (1993) 137–172; Hammar (2013).

27 Prisc. (*Grammatici Latini* [Keil] vol. 2, p. 382).

This passage is too short to allow us much consideration of style, but Priscian was interested in Metellus' phrase because of his use of the passive *polliceantur*. Whether this passage and the passage just discussed above derive from the same speech is not clear from the brief contextual comments, but the context is clearly the same. Here, Metellus seems to refer to a general practice of locals in provinces promising honorific statues to Roman magistrates, including generals, in an attempt to placate the representatives of the dominant Roman power. This passage suggests that Metellus was trying to defend himself against an allegation of extortion or corruption while on command in Africa or, at least, to contrast his own behaviour with what often happened.[28] Such an allegation would fit well with the overall criticism of his incompetence, and, moreover with the accusations of corruption against his predecessors in Africa, with which Manlius tried to implicate Metellus.

The first passage from Gellius suggests advance preparation of Metellus' speech, and indeed Metellus would probably have had quite some time between the receipt of his dismissal and his arrival in Rome to prepare a public response to the criticism of his conduct. Also, the length of time between his arrival and this public meeting is unknown and would have furnished him with extra time to prepare. As noted, he would have had to wait to be summoned by a magistrate to address a public meeting, but even if summoned at the last minute, Metellus will undoubtedly have done some advance preparation of a public response: he will have thought through his arguments to present his discharge in the most favourable light, he will probably have considered which arguments and styles would be most persuasive in front of which audience (friendly *contio*, hostile *contio* and senate; he might even have considered the risk of a defence speech in court or inquiry), and he will have thought about the most effective delivery.

Indeed, the rhetorical polish in the first passage not only suggests advance preparation but also an acknowledgement on Metellus' part that a well-executed speech could make his performance more convincing.[29] The political message in the two pieces is a rejection not only of the criticism—extortion in the second passage it seems—as being out of step with normal practice, but also a rejection of the messenger himself, Manlius, as an unworthy opponent.

28 This is unlikely to be seen in the context of a *repetundae* trial because the timing is wrong: Alexander (1990) no. 51, with n. 1. Moreover, the passage from Priscian does not suggest the context of a trial.

29 This preparation could backfire: Dion. Hal. *Isaios* 4 tells us that the orator Pytheas argued that the speeches of Isaios and Demosthenes could appear suspect because of their rhetorical and polished style.

Although the audience reception is not known, Metellus' rhetorical tactic may hint at the reception he hoped for or anticipated. Metellus' attack on the tribune who had persuaded the people to supersede Metellus in Africa might not have received a favourable response in a public meeting arranged by that tribune, Manlius. Not only would Manlius have been able to respond directly and immediately to Metellus' criticism, and thereby influence the popular audience present, but Manlius could also have prepared the meeting in such a way that the audience was predisposed against Metellus.[30] In such a setting, Metellus' performance may have been risky and self-defeating, which suggests that Metellus instead spoke at a public meeting called by a friendly magistrate. Indeed, Sallust suggests that Metellus had supporters in Rome, but Sallust's depiction of Metellus being received in Rome with great rejoicing by both the people and senators seems an exaggeration deriving from the account of Metellus' friend and legate, Rutilius Rufus.[31]

The second passage from Priscian suggests another tactic on Metellus' part, namely downplaying the criticism by, it seems, arguing that what happened to him was an everyday occurrence in the provinces or contrasting his own behaviour with common practice. It is easier to see Metellus adopting this kind of argument in a public meeting called by Manlius, although it is equally possible that he was summoned by a friend to address the people.

While the short fragments do not give us information about Metellus' delivery (tone of voice, gestures, movements), Gellius' interpretation of Metellus' response as an example of philosophical continence suggests that Metellus may have appeared calm and composed in his performance, rather than agitated and enraged at the allegations against him.[32] A further clue to Metellus' performance lies in his address of his audience as *quirites* ("citizens") which indicate what Hölkeskamp has called a "rhetoric of inclusion": the orator includes the audience in a community of citizens who all have a share in the state; by using this address, the orator aims at a rhetorical construction of consensus.[33] By including the audience on his side of the quarrel, Metellus also very clearly separates them from Manlius (*illum*, *eum*) and Manlius' viewpoint, and he suggests that the audience should moreover be included among good and decent men (*boni* and *probi*) in refusing even to mention or criticise Manlius.

30 Examples of this type of tactic is evidenced in some of Clodius' *contiones* of the 50s B.C.; cf. Tan (2013).

31 Sall. *Iug*. 88.1 with Paul (1984) 220.

32 Although Gellius may not have had more information than the text he quotes, he interprets Metellus' response in philosophical terms.

33 Hölkeskamp (2013) 19–20.

This rhetoric would have been more effective if Sallust is right in the friendly reception of Metellus at the time of his return to Rome. Alongside this rhetoric of inclusion (and exclusion of Manlius), Metellus' use of first-person singular pronouns (*ego*, *mihi*) suggests that another type of rhetoric is employed too, namely a "rhetoric of asymmetrical address" in Hölkeskamp's words, which means that the *ego* of the orator claims the role of leadership, guidance and authority, which demands acceptance if not also obedience from the audience.[34] This asymmetry was built into the hierarchical Roman culture and was re-enacted in the *contio* with the speaker and his audience as the actors. The same authoritative approach could be argued to be present in the fragment from Priscian where Metellus may have been teaching Manlius and the audience that Manlius' suggestion of Metellus' wrongdoing was mistaken in light of current practices in the provinces, or, alternatively, Metellus distanced himself from such practices. By these subtle, yet clear, signals to his audience, Metellus could convey his own superior position as guide to right conduct, his audience's inclusion on the right side of the question, and Manlius' exclusion from the citizenry of good and decent people. These types of addresses formed part of Metellus' self-presentation and indeed his performance in the *contio*.

3 Metellus Triumphs

In spite of the criticism and verbal attacks, Metellus was allowed to celebrate a triumph in 106 B.C. over the Numidians and Jugurtha and his honorific *agnomen* Numidicus—the conqueror of the Numidians—was formally acknowledged.[35] This grand recognition of his achievements in Africa came from the senate.[36] Metellus still had powerful supporters there, and the grant of a triumph was not only a recognition of Metellus but also a political statement of the senate against the recent and scathing criticism, even conviction in a public inquiry, of senatorial corruption and collusion with the enemy. The grant

34 Hölkeskamp (2013) 23–27.

35 Degrassi (1947) 85 (*fasti triumphales*); *Act. Tr.*; Cic. *Brut.* 135, *Att.* 1.16.4 (SB 16); Vell. 2.11.2, 15.3–4; Eutrop. 4.27.6; Auct. *de vir. ill.* 62.1; *Schol. Bob* St 176. The *agnomen* is attested in the *fasti triumphales* and most of the literary sources. If Linderski (1995) 436–443, (2007) 115–129 is right to understand the triumphal *agnomen* as informally given to a general by his soldiers and only accepted formally by the senate if mentioned in the *fasti*, then the senate will have conferred the *agnomen* to Metellus and it would have reinforced the senate's defiant stance against Marius.

36 Vervaet (2012); Rich (2014) 210–214—both with further references.

signalled that in the senate's view, Metellus was not the bad general, which Marius and Manlius had claimed, and Metellus therefore illustrated the point that senators generally were not necessarily bad, and that the humiliating discharge was unjust to Metellus, his family and indeed to the senate as a body. The grant could also be read as the senate's means to counter Marius' command by emphasising that Metellus had almost finished the war. The fact that the senate was still in control of grants of triumphs, in spite of inroads on other traditional senatorial prerogatives, made it a potent weapon with which to communicate the senatorial version of the events and act out the senate's position.

The continued criticism, however, is evidenced by a further passage from a speech of Metellus:

> Quintus autem Metellus Numidicus in oratione, quam de triumpho suo dixit, his uerbis usus est: qua in re quanto uniuersi me unum antistatis, tanto uobis quam mihi maiorem iniuriam atque contumeliam facit, Quirites, et quanto probi iniuriam facilius accipiunt, quam alteri tradunt, tanto ille uobis quam mihi peiorem honorem habuit; nam me iniuriam ferre, uos facere uult, Quirites, ut hic conquestio, istic uituperatio relinquatur.
>
> But Quintus Metellus Numidicus, in the speech which he delivered on his triumph, used these words: Insofar as you as a collective are much superior to me, he inflicts, Quirites, a much greater injury and insult on you than on me, and insofar as good men more easily accept a wrong than inflict one on another, he brings you in a worse situation than I; for he wants me to suffer an injury and you to inflict it, Quirites, so that I will have grounds for complaint, and you be the object of criticism.[37]

The address to the *quirites* confirms that this is also a speech in the *contio*. This is again a highly polished passage from Metellus, and similar in approach and words to the other passage from Gellius (*probus*, for example): indeed, his use of the Socratic maxim "to do wrong is worse than to suffer it",[38] resonates with his rejection of Manlius as an unworthy opponent in the other Gellian passage. In spite of these similarities, the two passages probably derive from two separate public meetings. Indeed, the description of the speech as "on his

37 Gell. *NA* 12.9.4. For a brief discussion of this speech in the context of grants of triumphs, see Rich (2014) 232–233.

38 Pl. *Gorg*. 473a–475e.

triumph" suggests that Metellus delivered it in connection with his triumph, either shortly before or after his triumph in 106 B.C.

There is clear evidence of commanders addressing the people to recount their achievements, and that is was customary to do so.[39] The evidence suggests that the timing of such a speech could be both before and after the triumph. Apart from general self-praise, the message would presumably differ between speeches before or after a triumph. If delivered before a triumph, and especially before a triumph had been granted, the commander could use the speech to communicate his version of the events and to justify his request of a triumph; a *contio* was the best opportunity to address the widest possible audience. If delivered after a triumph, the speech would be an oral accompaniment to the visual spectacle of the procession, and thereby a further medium through which to communicate the magnitude of the achievement. If there was a considerable time period between arrival at Rome and the triumph itself, it would make sense for the commander to take the first opportunity to address the people as an occasion to give his account of his military success.

In Metellus' case, the accusation of wrongdoing against Metellus suggests that he delivered the speech before his triumph in an attempt to counter any obstruction of the triumph such as obstruction of the passing of the necessary plebiscite granting Metellus *imperium* for the day of his triumph.[40] Indeed, the reference to an *iniuriam* or "injury" seems to refer to an attempt on the opponent's side to deny Metellus the *honos* of the triumph. The formal point of criticism against Metellus could have been that he had not managed to finish the war against Jugurtha (although that was not a prerequisite for a triumph), but there is no doubt that the underlying criticism was the more general allegation of senatorial corruption and mismanagement at home and

39 Pina Polo (1989) 147–150 lists the evidence: 486 B.C., Sp. Cassius, DH 8.70.1–5 (customary); 194 B.C., Cato the Elder, Prisc. (*Grammatici Latini* [Keil] vol. 4, 310); 191 B.C., P. Scipio Nasica, Livy 36.40.14; 189 B.C., L. Scipio Asiaticus, Livy 37.58.6–7; 167 B.C., L. Aemilius Paullus: (a) sources following Polybius—Livy 45.40.9–42.1 (customary); Diod. 31.11.1; Plut. *Aem.* 36; App. *Mac.* 19 (customary), (b) other sources—Vell. 1.10.4 (customary); Val. Max. 5.10.2; Sen. *Dial.* 6.13.3; Ampel. 18.13; 146 B.C., Scipio Aemilianus, Festus (Pirie and Lindsay (1930) 366); 106 B.C., Metellus Numidicus; 81 B.C., Sulla, Plut. *Sull.* 34.2; 61 B.C., Pompeius Magnus, Livy *per.* 103; Pliny, *NH* 7.99; Oros. 6.6.4. Malcovati (1976) 212 argues that such speeches were customary, but Itgenshorst (2005) 111 mentions that only three other such speeches are known, ignoring the other evidence.

40 In order to qualify for a triumph, Metellus had to retain his original *imperium* (hence the need to stay outside the *pomerium*) but he also needed a plebiscite granting him *imperium* to be held in the City on the day of the triumph: Rich (2014) 233.

abroad.[41] The present tenses in the passage furthermore suggests that this was a live issue and therefore that the speech preceded the triumph. The unnamed opponent criticised by Metellus may be Manlius again, as someone who had worked against Metellus in 107 B.C., and possibly also in 106 B.C. if another magistrate had given Manlius access to the *contio*. We know of no other tribune attacking Metellus in 107–106 B.C., and the only known tribune of 106 B.C. is Q. Mucius Scaevola, who was a supporter of the senate.[42] Of course, it could have been another tribune among the ten tribunes of the year, but it was not unheard of that a *privatus* could oppose the grant of a triumph.[43] Indeed, the delay between Metellus' arrival in Rome in spring-summer 107 B.C. and his triumph in 106 B.C. (securely dated by the *fasti triumphales*[44]) was probably not Metellus' choice (for, say, preparing the triumph) but more likely the result of obstruction to the law granting him *imperium* for the day of the triumph. The senate and Metellus might even have found it convenient to wait until Manlius left office on 9 December 107 B.C. before getting the law passed.

Metellus' attempt to get the people on his side by saying that his opponent was simply using the people for his own purposes was a standard rhetorical tool in contional oratory,[45] but also an important argument in the broader struggle between senators and tribunes for the people's favour. Underlying the dissatisfaction with the senatorial elite's behaviour and achievements in the war against Jugurtha was a more profound struggle about power distribution at Rome. What Metellus hints at in this passage is that those who claim to operate on behalf of the people are merely using the people to further their own agenda of obtaining power and influence for themselves without necessarily working for the best interests of the people.

The inclusion of a philosophical maxim in this speech may suggest that Metellus adopted a calm and composed appearance when addressing the people, as I have suggested he did in his *contio* speech after his return from the African command. And if this is right, we might also imagine him limiting

41 For the finishing of a war as no prerequisite for a triumph, see Degrassi (1947) 74–77 on the 14 triumphs *de Poenis* in the first Punic War; Rich (2014); *contra*: Bastien (2007) 236–238, 247; Pittenger (2008) 84.

42 Q. Mucius Scaevola (*RE* 22) held a *contio* at which L. Licinius Crassus (*RE* 55) spoke in favour of the *lex Servilia* restoring senators to juries: Cic. *Brut.* 161.

43 Ser. Sulpicius Galba (cos. 144 B.C.; *RE* 58) opposed the grant of triumph to L. Aemilius Paullus (*RE* 144) in 167 B.C.: Livy 45.35.8–9, 45.36.2–6; Plut. *Aem.* 30.2–4.

44 Degrassi (1947) 85.

45 Morstein-Marx (2004) 252–258 on contional oratory and the attempt to undermine the authority of the opponent.

his gestures and movements during his speech, preferring to communicate his message of being the wronged party through well-articulated arguments and a calm demeanour as this would underline an image of self-confidence in the knowledge of being right. Moreover, the emphatic use of *quirites* underlines even sharper than in the earlier Gellius passage Metellus' use of the rhetoric of inclusion, further underscored by his repeated use of second person plural pronouns (*uobis*, *uos*): it is Metellus and all good Roman citizens against Manlius (*ille*). By contrast to the earlier passage from Gellius, Metellus here uses a different kind of *ego*, namely one which he presents as inferior to the *quirites* ("qua in re quanto uniuersi me unum antistatis"). This "rhetoric of self-effacing modesty" was much more current in democratic Athens than in republican Rome,[46] which again suggests that Metellus borrowed this notion from Greek rhetoric alongside the Socratic maxim.

This hypothesis of calm behaviour in the speech against Manlius and in the speech on his triumph is supported by our knowledge of Metellus' behaviour in 100 B.C., when he was sent into exile by Saturninus. Alongside his son's, his family's and his friends' impassionate, even dramatic, campaign for a recall, Metellus himself seems to have adopted a calm and composed appearance in order to underline his own dignified position and the injustice of his banishment.[47] Fragments of two letters sent by Metellus to supporters in Rome during his exile, and preserved by Gellius, offer direct evidence of his self-fashioning and his message of composure in the knowledge of being a blameless victim but also a parallel to the fragmentary speeches of 107–106 B.C.:

> illi uero omni iure atque honestate interdicti, ego neque aqua neque igni careo et summa gloria fruniscor ("truly those men were interdicted from all law and respectability, but I lack neither fire not water, and enjoy the highest glory").

> at cum animum uestrum erga me uideo, uehementer consolor et fides urtusque uestra mihi ante oculos uersatur ("but when I see your affection towards me, I am comforted very much, and your loyalty and courage remain before my eyes").[48]

46 Hölkeskamp (2013) 23.

47 Cic. *Fam.* 1.9.16 (SB 20); Sen. *Ep.* 3.3.4. For discussion of Metellus' behaviour in 100–199 B.C., see Kelly (2006) 84–88, 143–145. For discussion of Cicero's use (and manipulation) of Metellus' *exemplum*, see Kelly (2006) 153–153; van der Blom (2010) 195–203.

48 Letter fragments quoted by Gell. *NA* 17.2.7, 15.13.6, and discussed in Kelly (2006) 85–87; the translations of the two fragments are Kelly's.

Again, we see a highly polished rhetorical style with alliteration in the second fragment (*uestrum … uideo, uehementer … uestra … uersatur*), the use of the rhetoric of inclusion of audience and exclusion of enemies, and references to his supporters' moral qualities (*fides* and *uirtus*) as well as his own supreme *gloria*. The written medium of letters certainly lent itself better to carefully wrought phrases, and the audience of these letters, Cn. Domitius (cos. 96 B.C.) and L. Domitius (cos. 94 B.C.), was already on Metellus' side in the conflict, but the clear similarities in rhetorical methods and self-presentation between the speech fragments and these letter fragments suggests that this was a public persona Metellus projected in both situations. This furthermore suggests that Metellus' appearance of calm composure as an exile in 100 B.C. was a repeat or elaboration of his earlier performance in 107–106 B.C.

4 Conclusion

Metellus' performances show that he was acting on behalf of himself as well as the senate and that he posed as the representative of good citizens against the tribunes attacking senators for incompetence and corruption. In formal terms, he did not need to respond to Marius' and Manlius' allegations (except if he had been formally called to address a *contio* by a hostile tribune), but the threat of loss of reputation and, just as serious, the loss of a triumph meant that Metellus had to react. A politician's status did not only depend on formal recognitions such as a triumph, but also on his reputation across the political spectrum, including the people. Not least in a situation when the people was antagonised against the senate and could be persuaded to vote against legislative proposals, against candidates for public office, and for inquiries and other special measures aimed at the political elite. Apart from the political disadvantage of popular hostility, it was important to save face against an opponent's personal attack for sake of honour itself; that of himself and of his family. Metellus could not simply stand by and watch Manlius destroy his reputation.

Metellus' decision to take up the challenge in the place where it had been issued—the *contio*—shows how much importance he placed on his public reputation with the people and how well he understood the possibilities of contional rhetoric. The fact that he prepared and delivered at least two speeches characterised by elegant clauses, philosophical content, rhetoric of inclusion, and a strong counter attack on one of the leaders in the opposition against him, Manlius, illustrates not only Metellus' skill as an orator, but also more generally the central role played by public speech in Roman republican politics, the per-

sonal nature of the political game, the performative aspects of public speeches, and the crucial need to protect and maintain personal and family reputation in a political system focused on individuals and not on policies or parties. The struggle between Marius—a self-made man and ostensibly the champion of the people and all virtuous Romans—and Metellus—allegedly the incompetent representative of a too-influential family and a corrupt senate—shows how personal ambition for public office and power could be staged as a clash between mass and elite.[49] Metellus' performance, admittedly in glimpses only, seems to have played into this stage set: his philosophical hints and polished rhetoric suggested his elite education and expertise in the higher echelons of Roman society, while his depiction of Manlius as an unworthy opponent could also be understood by his audience as the superiority or haughtiness of an elite senator dismissing the people's representative. Based on these passages, Metellus did nothing to reject the image of senatorial arrogance and sense of pre-eminence, but instead used the public meetings to promote himself as a worthy representative of all good Roman citizens, of the true leaders of the Roman state, and of the leading families of Rome and the senate.

49 See also Yakobson's (2014) discussion of the political implications of this struggle.

PART 3

Hypocrisis—Delivery—Actio

CHAPTER 9

Pitiable Dramas on the Podium of the Athenian Law Courts

*Kostas Apostolakis**

1 Emotional Performances in Law Courts

Pity for undeserved suffering was one of the ideals, which composed the image Athenians had of themselves and their city throughout the classical period. Emotional appeals aiming at arousing pity are amply attested in genres such as epic and tragedy, which were considered a part of civic education.[1] On the other hand, it is worth considering whether such ideals had any influence on the Athenians' behaviour in everyday life. A field very representative of the private and public life and the relative ideology is that of the Athenian law courts. It seems worthwhile, therefore, to focus on the use and the function of pity in forensic oratory, a genre closely associated with society, law and politics.

As is well known, for a defendant, pity was the appropriate feeling to elicit in an Athenian law court, as anger was for a prosecutor the desirable emotion to arouse in judges' minds.[2] Aristotle associates pity with the sense of vulnerability that a person feels when seeing another's misfortunes; in other words, this particular emotion derives from the consciousness that what somebody else suffers is very likely to be experienced sometime by the person who feels pity.[3] Another crucial dimension is that people deserving of pity are those who suffer undeserved misery.[4] Verbal appeals to pity on the podium of Athenian law courts were usually intensified by performative devices and visual effects, such as gesticulations, vocal ploys, and the appropriate attire. As Aristotle notes,

* I wish to thank the editors for their valuable comments.

1 See e.g. Johnson and Clapp (2005) 123–164; Tzanetou (2005) 98–122.

2 See Walton (1997) 41–45; Konstan (2001) and (2007) 418–419; Sternberg (2005) 98–122.

3 Ar. *Rh.* 1385b ἔστω δὴ ἔλεος λύπη τις ἐπὶ φαινομένῳ κακῷ φθαρτικῷ ἢ λυπηρῷ τοῦ ἀναξίου τυγχάνειν, ὃ κἂν αὐτὸς προσδοκήσειεν ἂν παθεῖν ἢ τῶν αὑτοῦ τινα, καὶ τοῦτο ὅταν πλησίον φαίνηται. "let pity be [defined as] a certain pain at an apparently destructive or painful evil happening to one who does not deserve it and which a person might expect himself or one of his own to suffer, and this when it seems close at hand" (transl. G. Kennedy).

4 Cf. Anaximen. *Rh. Al.* 34.5 πάντες ἐλεοῦσι τούτους, οὓς … οἴονται ἀναξίους εἶναι δυστυχεῖν. "all have compassion for those whom … they think do not deserve to suffer misfortune".

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those who support their speech with appropriate gestures, voices and miserable dress are more pitiable, because they set the evil before our eyes (πρὸ ὀμμάτων ποιοῦντες).[5] Aristotle actually discusses here the quality which in later textbooks is called *enargeia* "vividness": "a certain power to lead the things shown under the senses".[6]

It has often been suggested that the podium has direct and oblique associations with the theatrical stage.[7] On the other hand, we should stress that while oratorical performance very often exploits imagery and language relating to theatre and acting, orators were careful to dissociate themselves from theatrical delivery while simultaneously ascribing it to their opponents, because in the popular mind there was a gap between theatre and truth. These practices are well exemplified in Demosthenes' and Aeschines' forensic debates.[8] However, in modern bibliography forensic performances have been briefly dealt with and, as a result, some aspects have not been adequately discussed.[9] In what follows, I focus on a special kind of forensic performances, i.e. selected entreaties used by litigants in public trials of political interest, which aim to arouse the pity of the judges. More specifically, I discuss both the sensual and the intellectual dimensions of these entreaties in the light of contemporary social and moral values and in connection with the intended impact on the audience. I argue that this investigation could contribute to the reconstruction of certain important aspects of an Athenian trial.

The most discussed manipulation of the visual sense to generate the desired emotional reaction in the history of Attic forensic oratory was credited to

5 Ar. *Rh.* 1386a ἐπεὶ δ'ἐγγὺς φαινόμενα τὰ πάθη ἐλεεινά ἐστιν … ἀνάγκη τοὺς συναπεργαζομένους σχήμασι καὶ φωναῖς καὶ ἐσθῆσι καὶ ὅλως ὑποκρίσει ἐλεεινοτέρους εἶναι (ἐγγὺς γὰρ ποιοῦσι φαίνεσθαι τὸ κακόν, πρὸ ὀμμάτων ποιοῦντες ἢ ὡς μέλλοντα ἢ ὡς γεγονότα· καὶ τὰ γεγονότα ἄρτι ἢ μέλλοντα διὰ ταχέων ἐλεεινότερα), "and since sufferings are pitiable when they appear near at hand … necessarily those are more pitiable who contribute to the effect by gestures and cries and display of feelings and generally in their acting; for they make the evil seem near by making it appear before our eyes either as something about to happen or as something that has happened; and things are more pitiable when just having happened or going to happen in a short space of time" (transl. G. Kennedy).

6 δύναμίς τις ὑπὸ τὰς αἰσθήσεις ἄγουσα τὰ δηλούμενα (D.H. *Lysias* 7). On *enargeia* see Webb (2009b) 87–106.

7 For the most recent discussions, see Hall (2006) 383–386; Duncan (2006) 58–89; Serafim (2017).

8 See below, section 2.2 and Serafim (2017).

9 Bers (2009), esp. ch. 6, offers a brief survey of the more typical cases. Hall (2006) 353–392 deals with recognisable theatrical aspects in forensic oratory but her comprehensive study is not detailed. See Serafim (2017).

Hyperides, who defended Phryne when the courtesan was brought to trial on a capital charge. As the orator realised that his speech had not persuaded the judges and that they were about to condemn her, he tore the courtesan's tunic and bared her breast. This emblematic gesture, supported by the orator's appeals to pity in the epilogue of his speech (ἐπιλογικοὶ οἶκτοι), swayed the judges and Phryne was rescued from certain death (Ath. 13.590e).[10] In that case, the performance proved more effective than the speech itself.

Besides, emotional entreaties which seek to arouse pity, an emotion usually associated with tragedy (Arist. *Po.* 1449b), must be the most "theatrical" parts of a speech.[11] Hyperides' device, for example, brings to mind the Euripidean Helen's gesture, when she bared her breast in order to charm Menelaus and save her life.[12] It might be important that Euripides' Helen is a heroine who acts in awareness of her theatrical status and knows that such a gesture will affect her audience, i.e. Menelaus, within the dramatic plot and, indirectly, the spectators of the tragedy.

Another forensic visual effect is attested in Herodotus, with reference to Miltiades' trial. The Athenian general was unable to defend himself, because his thigh was festering and his friends spoke for him, mentioning his previous successes. The wounded general, lying on a stretcher, provided a spectacle to the audience of his trial, though he did not give an actual performance.[13] It seems that the impressiveness of the scene and the consequent *eleos* were produced by the stark contrast between the image of the brave and triumphant Athenian general of the Marathon, an image which many of the judges and the spectators would likely recall to their memories, and the present spectacle of a man feeble, wounded and unable to stand.

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10 See Cooper (1995) 303–318, who, however, questions this story.

11 For the influence of tragedy on oratory see Dorjahn (1927) 85–93; Hall (2006) 353–392; Apostolakis (2007) 179–192.

12 Menelaus' reaction to the sight of Helen's breast was famous in the older poetry (e.g. Stesich. 201 Page; Ibyc. 296 Page), but a detailed description of the scene first appears in Eur. *Andr.* 628; cf. Ar. *Lys.* 155; see Hall (2006) 362.

13 Hdt. 6.136.2 Μιλτιάδης δὲ αὐτὸς μὲν παρεὼν οὐκ ἀπελογέετο (ἦν γὰρ ἀδύνατος ὥστε σηπομένου τοῦ μηροῦ), προκειμένου δὲ αὐτοῦ ἐν κλίνῃ ὑπεραπελογέοντο οἱ φίλοι, τῆς μάχης τε τῆς ἐν Μαραθῶνι γενομένης πολλὰ ἐπιμεμνημένοι καὶ τὴν Λήμνου αἵρεσιν "Miltiades, though he was present, could not speak in his own defence, since his thigh was festering; he was laid before the court on a stretcher, and his friends spoke for him, mentioning the fight at Marathon and the conquest of Lemnos". The scene of the wounded and silent hero might also be reminiscent of the silence of tragic actors in Aeschylus, an effective dramatic technique. This fame, however, rests on Aristophanes' *Ran.*905 ff.; see Taplin (1972) 57–97; Hall (2006) 361.

Moreover, although Aristotle (*Po*. 1451b23–26) doubts whether the majority of spectators in a theatre had the ability to recall even the best-known material, it seems that at least some of them did have that ability, otherwise the numerous intertextual allusions in the plays, and in particular the paratragic passages in comedies, would not work.[14] Forensic entreaties, therefore, are likely to bring to the judges' minds *hiketeia* scenes from tragedy, where supplicants appear, usually before an altar, and follow a typical process.[15] The connection of emotional forensic scenes with drama is also alluded to in Aristophanes. When Dikaiopolis prepares to defend himself before the chorus of the old Acharnians, he requests that his judges allow him to dress in the most miserable way, and visits Euripides, who ideally will provide him with a pitiable dress.[16]

Forensic entreaties, however, are not necessarily always associated with the theatre. When Lycoleon spoke on behalf of Chabrias in court,[17] he pointed to the latter's bronze statue, which had been erected in the Agora and could be seen from the court. The statue depicted Chabrias kneeling on the ground, as a commemoration of his successful order towards his troops to await the enemy on their knees. Lycoleon describes the statue as an imaginary suppliant, who makes a very vivid entreaty on behalf of the real Chabrias.[18] Scenes that build on expressions of pity were also used in law courts, in order to create anger against heartless opponents. The implementation of such a device is observed in Aeschines' calling Arignotus to the platform (1.102–104). Arignotus was Timarchus' blind uncle, who had been treated unfairly by his nephew. The appearance of Arignotus on the platform would cause pity for the blind old man and anger against his heartless nephew.[19]

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14 On the literary competence of the Athenian theatrical audience see Revermann (2006b) 99–124.

15 For such scenes see Gould (1973) 74–103; Naiden (2006) 71–92.

16 Ar. *Ach*. 383–384 Νῦν οὖν με πρῶτον πρὶν λέγειν ἐάσατε/ ἐνσκευάσασθαί μ' οἷον ἀθλιώτατον "Permit me, therefore, before I speak, to dress in the manner most likely to draw pity". For Euripides' preference for such pitiable scenes cf. e.g. *Med*. 496–498; 708–715; 853–865; *Heracl*. 123–125; *Hec*. 787–811.

17 A type of *synegoria*, cf. Rubinstein (2000) 156, n. 93.

18 Arist. *Rh*. 1411b καὶ Λυκολέων ὑπὲρ Χαβρίου 'οὐδὲ τὴν ἱκετηρίαν αἰσχυνθέντες αὐτοῦ, τὴν εἰκόνα τὴν χαλκῆν'· μεταφορὰ γὰρ ἐν τῷ παρόντι, ἀλλ' οὐκ ἀεί, ἀλλὰ πρὸ ὀμμάτων· κινδυνεύοντος γὰρ αὐτοῦ ἱκετεύει ἡ εἰκών, τὸ 'ἔμψυχον δὴ ἄψυχον' "and [consider] Lycoleon peaking on behalf of Chabrias: "not ashamed of his suppliant attitude in that bronze statue"; it was a metaphor at the time it was spoken, but not at all times, but it was bringing-before-the-eyes, for [then] when he was in danger, the statue [seemed to] supplicate, the lifeless for the living (transl. G. Kennedy).

19 See Rubinstein (2013b) 161.

It seems that, compared to dramatic performances, rhetorical delivery was more restrained. Theatrical elements, in particular, were to be used very sparingly in rhetorical performances, otherwise they risked being associated with the illusion produced in the theatre and thus subverting the credibility of the argumentation.[20] Concerning forensic entreaties, in particular, they do not seem to follow the ritual gestures of a typical *hiketeia* and have been described as "figurative" (Gould 1973: 77). It is, however, possible that expressive delivery in such scenes contributed substantially to the creation of an emotionally charged atmosphere. Pitiful voice, in particular, was probably an effective means of creating strong emotions.[21] Moreover, there are indications that defendants used to gesticulate towards the judges, as the latter were entering the court, and shake their hands, in order to elicit their sympathy.[22]

Anyone attempting a reconstruction of forensic entreaties will confront the same difficulties as those found in other aspects of performance in Attic oratory. We have written texts at our disposal, but we are missing the most important elements of the original delivery: look, voice, gestures and bodily movements. Moreover, it is commonly believed that most of the surviving written speeches are revised versions of their spoken ones.[23] However, sometimes signs survive in the text suggesting an expressive performance and a charged delivery. More specifically, the orator instructs the audience to react in a certain way, usually in imperative mood, and also uses performative language combining information and action. Passages from tragedy and comedy may also be use-

20 As Cicero notes (*De or*. 3.214) with reference to delivery (*actio*), orators are "performers of truth itself" (*ueritatis ipsius actores*), while actors are "imitators of truth" (*ueritatis imitatores*); cf. 3.220, where it is said that, in contradistinction with actors, orators "should not show but indicate" (*non demonstratione sed significatione declarare*). For theatrical terms alluding to a gap between theatre and reality see Serafim (2017).

21 Cf. D. 21.186–187 and 18.287 (cited below), where Aeschines' supposedly whining voice is described as "an actor's voice".

22 Cf. Ar. *V*. 553–554 κἄπειτ' εὐθὺς προσιόντι/ἐμβάλλει μοι τὴν χεῖρ' ἀπαλὴν τῶν δημοσίων κεκλοφυῖαν "Then, as soon as I approach, he puts his soft hand in mine, the hand that has been stealing some public money"; [X]. *Ath. Pol.* 1.18 ἀντιβολῆσαι ἀναγκάζεται ἐν τοῖς δικαστηρίοις καὶ εἰσιόντος του ἐπιλαμβάνεται τῆς χειρός "he is compelled to plead humbly in the courts and to seize people's hands as a suppliant as they enter"; Posidipp. fr. 13 K-A; see Naiden (2004) 89, n. 20.

23 Cf. Plu. *Dem*.9, who informs us that Demosthenes was more daring in his spoken than in his written speeches. Aristotle (*Rh*. 3.12.1–2) also notes that the difference between oral and written style corresponds to different kinds of audience, obviously listeners and readers. For the revision of speeches see Worthington (1991) 56–57.

ful for the reconstruction of such scenes and even support speculations on the possible impact upon judges.[24]

2 Bringing forward Relatives and Children

The language of pity, supported by expressive delivery and the presence on the platform of undeservedly suffering persons, constitutes a special type of forensic entreaty, which often occurs in epilogues of defence speeches. The practice of bringing forward family members to implore the judges' mercy was common in Athenian and Roman trials.[25] Ancient rhetoricians include such practices in their handbooks. Hermogenes (*Id.* 52.16–18 Rabe) instructs the speakers to find the appropriate moment to bring forward children and relatives. Quintilian associates this forensic practice with the arousal of pity and deals with it in the relevant section, the chapter where he discusses emotions.[26] Moreover, he notes that when wives, parents, and children, who represent the most vulnerable members of a society, are pleading on the podium, even a strict judge can be placated (*Inst. Or.* 4.1.13). This recalls Aristotle's *epieikeia*, a concept associated with tempering of the strictness of written law and with forgiveness (*Rh.* 1374b 1; cf. *EN* 1143a 21).[27]

Visual effects were crucial to such entreaties. In the absence of living individuals, Andocides invites the judges to imagine that his dead ancestors beseech them on his behalf (*eidōlopoeia*).[28] Moreover, forensic entreaties including

24 Serafim (2017).

25 For Athenian trials cf. And. 1.148; [Lys.] 20.34–35; Isoc. 15.321; Aeschin. 2.152 and 179; D. 19.281 and 310; 21.99, 182, 186–187; 25.84; 54.38; Athen. 592e; Din. or.85, fr. 1; Hyp. *Philip.* 9. For Roman trials cf. Cic. *Brut.* 23. 90–91; *Flacc.* 13.105–107. See MacDowell (1990) 321; Cooper (1994) 1–10; Walton (1997) 41–45; Whitehead (2000) 64; Carey (2004) 26–45; Hall (2006) 360.

26 11.3.174 *Possunt uideri alia quoque huius partis atque officii, reos excitare, pueros attollere, propinquos producere, uestes laniare: sed suo loco dicta sunt.* "It may be thought that there are other matters that belong to this part and to this function of an orator: calling forward the defendant, lifting up his children, leading forward his relatives, tearing one's clothes; but these have been discussed in their proper place".

27 See Harris (1994) 140; Carey (1996) 42; Konstan (2000) 138; Serafim (2017).

28 And. 1.148–149 Μὴ τοίνυν, εἰ αὐτοὶ τεθνᾶσι, καὶ [περὶ] τῶν πεπραγμένων αὐτοῖς ἐπιλάθησθε, ἀλλ' ἀναμνησθέντες τῶν ἔργων νομίσατε τὰ σώματα αὐτῶν ὁρᾶν αἰτουμένων ἐμὲ παρ' ὑμῶν σῷσαι. "So although they are dead, at least do not forget what they did. Remember their achievements: imagine that you see them in the flesh, begging you for my life". For the imagination-oriented *Deixis am Phantasma* see Bühler (1990) 94–95; Serafim (2017).

bringing children onto the platform might sometimes call to mind supplication scenes from tragedy.[29] In Aeschylus' *Suppliants* (191–203) Danaus instructs his daughters how to supplicate Pelasgus, and gives them specific directions concerning the decorum (ὡς ἐπήλυδας πρέπει), which is necessary in order to achieve the intended goal. These instructions include piteous and plaintive language of necessity (αἰδοῖα καὶ γοερὰ καὶ ζαχρεῖ' ἔπη), words that are not arrogant (φθογγῇ δ' ἑπέσθω πρῶτα μὲν τὸ μὴ θρασύ), and peaceful eyes (σωφρονῶν ἴτω προσώπων ὄμματος παρ' ἡσύχου). It is true, however, that the Danaids accompany their *hiketeia* with speech, while in the court the orator spoke for the children—he was the voice of the *hiketai*, who in turn produce the spectacle.

Concerning the reconstruction of the original forensic entreaties, wording and verbal signs in the surviving texts are helpful. First, the middle voice ἀναβιβάζεσθαι (e.g. [Lys.] 20.34) suggests that the children approach the podium at the invitation (probably a gesture) of the defendant. This practice also might presuppose a stage of preparation, where the children are given special instructions by their father or the logographer, and are told how to cry and behave in order to seem pitiable. In the "Trial of the Dogs" in Aristophanes' *Wasps*, special instructions are given to Labes' puppies by Philocleon himself (since the dog Labes is a mute character), who is accustomed to attend such pitiful dramatics on the platform: Ar. *V.* 976–978 ποῦ τὰ παιδία;/ ἀναβαίνετ', ὦ πόνηρα, καὶ κνυζούμενα/ αἰτεῖτε κἀντιβολεῖτε καὶ δακρύετε "Where are his children? Come up here, you poor things, and implore and beseech and whimper and weep".

As is well known, women were not allowed either to speak or to testify as witnesses in courts. However, they used to accompany their children on the platform and support the defendants' plea by weeping and supplicating the judges.[30] As expected, in the surviving speeches defendants themselves avoid giving specific information for their wives who were standing by, since women should not be mentioned in public.[31] Also it seems that they should bring on the podium only legitimate wives and concubines. As Athenaeus reports, Demosthenes himself had introduced before the court the children he had by a courtesan, without their mother, in order to avoid calumny.[32]

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29 Euripides' tragedy in particular; see section 3 and n. 60 below.

30 Cf. Ant. fr. 3 Blass … καὶ γυναῖκες καὶ παῖδες ἔμελλον δεῖσθαι ὑμῶν "… women and children were about to beseech you"; D. 25.84; Din. *Dem.* 109. Also in Roman trials women circulated outside courts; see Naiden (2006) 65.

31 See Schaps (1977) 323–330.

32 592e Δημοσθένη δὲ τὸν ῥήτορα καὶ τεκνοποιήσασθαι ἐξ ἑταίρας ἔχει λόγος. αὐτὸς γοῦν ἐν τῷ περὶ Χρυσίου λόγῳ προαγήοχε τὰ τέκνα ἐπὶ τὸ δικαστήριον ὡς δι' ἐκείνων ἔλεον ἕξων χωρὶς τῆς μητρός, καίτοι ἔθος ἐχόντων τῶν κρινομένων τὰς γυναῖκας ἐπάγεσθαι· ἀλλ' αἰδοῖ τοῦτ'ἐποίησεν,

Roman orators also often used this tactic. The most impressive example, which brings into play an effective visual appeal to pity, is that used by Cicero in his speech *Pro Flacco*. The orator introduces Flaccus' son in order to arouse the pity of the judges, while simultaneously describing in detail the imploring glance of the young child: "he turns his eyes to me, his expression appeals to me for aid and somehow his tears call upon me to keep faith and look for that position of distinction which once promised to his father for saving our country".[33]

Forensic entreaties involving defendants' children and relatives usually took place after the oral presentation of the case, mostly as a visual effect, supporting the defendant's appeals to the judges' pity, or accompanying him in weeping and crying.[34] Moreover, references to these entreaties in speeches usually appear as common *topoi* and fail to revive the original performance. Therefore, at first sight, they seem to be beyond the scope of rhetoric, in the sense that they mainly function as visual and auditory effects. Sometimes, however, such scenes, containing rhetorical inventiveness and performative dynamics, were incorporated in the speeches. The speakers indirectly instruct the audience to discern and appreciate possible divergences from the norm and to feel the appropriate emotion, in view of the special conditions of the particular entreaty. These emotional performances, therefore, provide an opportunity for analysis in full dramatic flow.

In what follows, I explore indicative examples from two forensic speeches. Both are defensive speeches, i.e. the species for which entreaties are more appropriate, since a defendant potentially risks money, property, even his citizenship and his life, and is therefore more vulnerable than a prosecutor. Both speeches have a political dimension, and in both the speaker uses a performative language when describing the special parameters of the entreaty. Moreover, the two speeches offer a complementary picture of this particular type of forensic performance. Lysias' *For Polystratus* ([Lys.] 20), the earliest surviving forensic speech with a political dimension, is a *synēgoria*, probably written and delivered by a defendant's relative.[35] It is, therefore, a sample of

φεύγων τὴν διαβολήν. "That the orator Demosthenes had children by a courtesan is common report. He himself, at any rate, in the course of his speech *On the Bribe of Gold*, brought the children out before the court to excite compassion through them, unaccompanied by their mother, although it was customary for defendants in a trial, if they had wives, to produce them; but this he did from shame, to avoid the scandal".

33 *Qui etiam me intuetur, me uoltu apellat, meam quodam modo flens fidem implorat ac repetit eam quam ego patri suo quondam pro salute patriae spoponderim dignitatem.*

34 Cf. D. 19.281, 310; 21.186–188; Hyp. 4.9; see Rubinstein (2000) 155.

35 See Apostolakis (2003) 83–90.

non-professional oratory. On the other hand, the speech *On the False Embassy* (Aeschin. 2) is delivered by an active politician, who, as a former actor, was considered a specialist in delivery.[36]

2.1 [*Lysias*] *20, for Polystratus*

An indicative example is included in the epilogue of [Lysias] 20 *For Polystratus*. This speech was delivered at the trial of an old man named Polystratus, who was involved in the short-lived regime of the Four Hundred. The trial was conducted after the fall of the regime, in 410 B.C., and the speaker was Polystratus' son, who defended his father. It is interesting that the speaker innovates, by reversing the pattern of a forensic entreaty. It is usually the defendant who brings his children onto the podium and asks the jury to acquit him for their sake. In our case, instead, the speaker and his brothers bring along their old father Polystratus and appeal to the judges' pity:

> [Lys.] 20.35. πεπόνθαμεν δὲ τοὐναντίον τοῖς ἄλλοις ἀνθρώποις. οἱ μὲν γὰρ ἄλλοι τοὺς παῖδας παραστησάμενοι ἐξαιτοῦνται ὑμᾶς, ἡμεῖς δὲ τὸν πατέρα τουτονὶ [καὶ ἡμᾶς] ἐξαιτούμεθα, μὴ ἡμᾶς ἀντὶ μὲν ἐπιτίμων ἀτίμους ποιήσητε, ἀντὶ δὲ πολιτῶν ἀπόλιδας· ἀλλὰ ἐλεήσατε καὶ τὸν πατέρα γέροντα ὄντα καὶ ἡμᾶς. εἰ δὲ ἡμᾶς ἀδίκως ἀπολεῖτε, πῶς ἢ οὗτος ἡμῖν ἡδέως συνέσται ἢ ἡμεῖς ἀλλήλοις ἐν τῷ αὐτῷ, ὄντες ὑμῶν τε ἀνάξιοι καὶ τῆς πόλεως; ἀλλ' ὑμῶν δεόμεθα τρεῖς ὄντες ἐᾶσαι ἡμᾶς ἔτι προθυμοτέρους γενέσθαι.
>
> Our predicament is the opposite of other people's: they bring forward their children and plead with you; we bring forward our father and ourselves and beg you not to deprive us of citizen rights and of citizenship. Take pity on our father, who is an old man, and on us. If you destroy us unjustly, how will he take pleasure in our company, or we in each other's, given that we will have been judged unworthy of yourselves and the city? There are three of us, and we beg you to allow us to be still more loyal in future.
>
> transl. S. TODD

The idea of family solidarity is always present in law courts.[37] In addition, given that the Athenian legal system adopted some forms of collective punishment,[38]

36 See Serafim (2017), especially "Part II".

37 See Lavency (1964) 81; MacDowell (1978) 251.

38 See Hansen (1976) 118–119; Rubinstein (2000) 155.

Polystratus' sons are directly involved in their father's case. More particularly, if the defendant was found guilty, then a heavy fine would be imposed on him. If he could not pay this fine within the set time, he was declared an *atimos* (i.e. he would be deprived of his civil rights and excluded from the privileges of public life) and his property would be subject to confiscation. This *atimia* was also a threat to the male heirs of the *oikos*, if the debtor died before settling his debt.[39] It is, therefore, quite predictable that the pitiable plea would include both the defendant Polystratus and his sons.

The vocabulary used by the speaker (cf. especially §§35–36) is emotionally charged and brings before the audience's eyes the misfortunes that will plague the family if the defendant is condemned. At the same time, the speaker uses language, which is not only descriptive but also performative, in the sense that it is highly likely that verbs such as παραστησάμενοι, ἐξαιτούμεθα, ἐλεήσασθε, and δεόμεθα were accompanied by physical movements on the podium. More specifically, the speaker, accompanied by his two brothers, brings his father onto the rhetorical platform (παραστησάμενοι) and gestures towards him (τὸν πατέρα τουτονί);—this is *deixis*, the pointing function of the language. The formulation ἀλλ' ὑμῶν δεόμεθα τρεῖς ὄντες, supported by the language of pity (§34 ἐλεοῦντας; §35 ἐλεῆσαι, ἐλεήσαντας; §36 ἐλεῆσαι, ἐλεήσαντας) forms the culmination of the collective emotional plea and might suggest an unusual performance in such a forensic context: the speaker, flanked by his two brothers, invites the judges to show mercy to their old father and themselves, by using deictic gesticulations and, probably, a pitiful tone of voice.

The old defendant probably remained silent, but his age as a visual image is used in order to arouse pity; cf. §3 ἀλλ' ὁρᾶτε αὐτοῦ τὴν ἡλικίαν, where the speaker begs the judges to see Polystratus' age with their own eyes, in a context where old age is said to be incompatible with oligarchic ambitions. A latent element of passionate delivery might be the alliteration combined with hiatus in the phrase γέροντα ὄντα, where the wording is stressed due to the retardation of the pronunciation.[40] The alliteration γέροντα ὄντα might also have a tragic color; cf. E. *Ba.* 189 ἐπιλελήσμεθ' ἡδέως γέροντες ὄντες. Besides, the rare in oratory substantive γέρων (*unicum* in Corpus Lysiacum), combined with the adjective

39 The wording of the law for hereditary *atimia* was ἄτιμον εἶναι αὐτὸν καὶ τοὺς παῖδας τοὺς ἐξ ἐκείνου (SEG xii.87). See Apostolakis (2003) 58–59.

40 For pity aroused due to old age cf. Pl. *Phdr.* 267c 7–9 τῶν γε μὴν οἰκτρογόων ἐπὶ γῆρας καὶ πενίαν ἑλκομένων λόγων κεκρατηκέναι τέχνῃ μοι φαίνεται τὸ τοῦ Χαλκηδονίου σθένος "For tearful speeches, to arouse pity for old age and poverty, I think the precepts of the mighty Chalcedonian hold the palm"; cf. also the discussion in Gorg. *Pal.* 82B 11s, 34 (D-K 2,302).

ἄπολις, which may be reminiscent of tragedy, contribute to a charged delivery.[41] By using words and phrases which have a latent tragic color in a performative forensic entreaty, the speaker perhaps invites the judges and onlookers to envisage the impending misfortunes of Polystratus' family from an almost tragic perspective.

The final individualised plea to the judges (πρὸς τῶν ὑπαρχόντων ἀγαθῶν ἑκάστῳ) is also of special interest. The speaker simultaneously addresses two different sub-categories, first those who have children and then those of the same age, and invites them to take pity on and acquit the defendant: [Lys.] 20.36 δεόμεθα οὖν ὑμῶν πρὸς τῶν ὑπαρχόντων ἀγαθῶν ἑκάστῳ, ὅτῳ μὲν εἰσὶν ὑεῖς, τούτων ἕνεκα ἐλεῆσαι, ὅστις ⟨δ'⟩ἡμῖν ἡλικιώτης τυγχάνει, διὰ τὸν πατέρα ἐλεήσαντας ἀποψηφίσασθαι· "We beg you for the sake of whatever is most dear to each of you. Those of you who have children, take pity on us for their sakes. Those who are the same age as ourselves or as our father, take pity and acquit us" (transl. S. Todd). This plea is in accordance with Aristotle's remark that men pity those who resemble them in age, character, habits, position, or family and, in particular, those who have parents or children.[42] The particular wording also alludes to specific gestures towards the jury and perhaps imploring bodily movements.

Another noteworthy element is that this forensic entreaty combines emotional appeal with rational arguments. More specifically, the speaker supports his appeal to pity with the mention of the family's previous services to the city, and uses an *a fortiori* argument: since Athenian judges often pardon a defen-

41 Cf. A. *Eum.* 457; S. *OC* 1357; *Phil.* 1018; Diog. Sin. 88F 4,1 Snell ἄπολις, ἄοικος, πατρίδος ἐστερημένος "cityless, homeless, being deprived of his fatherland"; Eur. *Hipp.* 1029 ἄπολις, ἄοικος, φυγὰς ἀλητεύων χθόνα. "cityless, homeless, an exile wandering over the land" (this line, however, was deleted by Valckenaer and the following editors); it is also used in speeches in such pathetic epilogues: Ant. *Tetr.* A. 2.9 ἐὰν δὲ καταληφθεὶς ἀποθάνω … φυγὼν γέρων καὶ ἄπολις ἐπὶ ξενίας πτωχεύσω … "but if I am convicted now and put to death, I shall leave a foul disgrace for my children; or if I go into exile, an old man without a country, I'll be a beggar in a foreign land"; Isoc. 14.55; see Apostolakis (2003) 246–247.

42 Arist. *Rh.* 1386a καὶ τοὺς ὁμοίους ἐλεοῦσιν κατὰ ἡλικίαν, κατὰ ἤθη, κατὰ ἕξεις, κατὰ ἀξιώματα, κατὰ γένη· ἐν πᾶσι γὰρ τούτοις μᾶλλον φαίνεται καὶ αὐτῷ ἂν ὑπάρξαι· ὅλως γὰρ καὶ ἐνταῦθα δεῖ λαβεῖν ὅτι ὅσα ἐφ' αὑτῶν φοβοῦνται, ταῦτα ἐπ'ἄλλων γιγνόμενα ἐλεοῦσιν; "And they pity those like themselves in age, in character, in habits, in rank, in birth; for in all these cases something seems more to apply also to the self; for in general, one should grasp here, too, that people pity things happening to others, in so far as they fear for themselves"; cf. 1385b 18 καὶ οἷς ὑπάρχουσι γονεῖς ἢ τέκνα ἢ γυναῖκες· αὐτοῦ τε γὰρ ταῦτα, καὶ οἷα παθεῖν τὰ εἰρημένα. "Also those that have parents or children or wives; for these are their "own" and subject to the sufferings that have been mentioned" (transl. G. Kennedy).

dant's crime on account of his children, although they do not know what kind of citizens they will grow up to become, it would be far more just to reward those whom they have already tested.[43] Even more noteworthy is the speaker's request for due reward (§ 31 τὴν ἀξίαν χάριν). This formulation brings to mind suppliants in the Athenian Council and Assembly, who argue that they are *axioi*, "worthy". As Naiden (2004: 71–92) notes, ""worth" is the most common and perhaps paradigmatic reason to accept a suppliant".

2.2 *Aeschines 2, on the False Embassy*

Aeschines' *On the False Embassy* was delivered in 343 B.C. as a defence speech in a trial, in which the prosecutor was his major opponent Demosthenes. The anti-Macedonian orator, in a speech which survives under the same title (D. 19), accused Aeschines of being a traitor who took bribes from Philip and betrayed his city. Demosthenes argues that Aeschines is responsible for the delay in negotiations conducted during the second embassy, a delay which allowed Philip to annex more territories in Thrace. Aeschines defends his own role in the second embassy. He asserts that he, too, was deceived by Philip and attributes the outcome of the embassy to a reversal of fortune. Moreover, he insists that Demosthenes' accusations are unfounded, since he has produced no evidence of any treasonous activity.

Signs of an effective rhetorical performance survive in Aeschines' speech.[44] In the epilogue, in particular, he invites his daughter and his sons onto the podium and attempts a final appeal to the judges' pity. The speaker uses a supplicating language (2.179–180 δέομαι καὶ ἱκετεύω, παρακαλῶ καὶ ἱκετεύω, δέομαι σῶσαί με, αἰτῶ) and addresses sub-groups of the audience, the criterion being their having old fathers or young brothers (cf. the epilogue in the speech *For*

43 [Lys.] 20.34 καίτοι ὁρῶ μέν γ' ὑμᾶς, ὦ ἄνδρες δικασταί, ἐάν τις παῖδας αὑτοῦ ἀναβιβασάμενος κλάῃ καὶ ὀλοφύρηται, τούς τε παῖδας δι' αὐτὸν εἰ ἀτιμωθήσονται ἐλεοῦντας, καὶ ἀφιέντας τὰς τῶν πατέρων ἁμαρτίας διὰ τοὺς παῖδας, οὓς οὔπω ἴστε εἴτε ἀγαθοὶ εἴτε κακοὶ ἡβήσαντες γενήσονται· ἡμᾶς δ' ἴστε ὅτι πρόθυμοι γεγενήμεθα εἰς ὑμᾶς, καὶ τὸν πατέρα οὐδὲν ἡμαρτηκότα. ὥστε πολλῷ δικαιότεροί ἐστε, ὧν πεπείρασθε, τούτοις χαρίσασθαι, ἢ οὓς οὐκ ἴστε ὁποῖοί τινες ἔσονται. "Nevertheless, gentlemen of the jury, we see that if somebody brings forward his children and weeps and laments, you take pity on the children if they are to lose their citizen rights on his account, and you pardon the father's crimes on account of the children, without knowing whether they are going to turn out well or badly when they grow up. In our case you know that we have been loyal to you and that our father has done nothing wrong. So it will be far more just for you to reward those whom you have just tested, rather than people whose future development is unknown to you".

44 For a detailed survey, see Serafim (2017).

Polystratus). He also supplicates the gods (2.180 παρακαλῶ δὲ καὶ ἱκετεύω σῶσαί με πρῶτον μὲν τοὺς θεούς). It seems that we have at our disposal some information on the delivery in such supplications. Plato (*Laws* 717a) informs us that if somebody called upon the Olympian gods, he raised his right hand; if he prayed to chthonic gods, he raised his left hand. As Serafim (2017) notes, "although the court etiquette may not allow the speaker to act as if he was praying outside the court, nevertheless, the possibility that Aeschines had recited his prayer-invocation to the gods by raising the volume of his voice and stretching out, at least, one of his hands cannot be ruled out completely".

Moreover, instead of arousing the judges' pity for himself, Aeschines describes in pitiable language the consequences an unfavourable verdict will have on the innocent members of his family.[45] The enactment of the whole scene, consisting of an old man and small children on the podium, and combined with the strong emotional language of pity, would have had an impact on the judges:

> 2.179 Κἀμοὶ μὲν οἱ συνδεησόμενοι πάρεισιν ὑμῶν πατὴρ μέν, οὗ τὰς τοῦ γήρως ἐλπίδας μὴ ἀφέλησθε, ἀδελφοὶ δέ, οἳ διαζυγέντες ἐμοῦ ζῆν οὐκ ἂν προέλοιντο, κηδεσταὶ δὲ καὶ ταυτὶ τὰ μικρὰ μὲν παιδία καὶ τοὺς κινδύνους οὔπω συνιέντα, ἐλεεινὰ δ' εἴ τι συμβήσεται παθεῖν ἡμῖν.
>
> There are people here to join me in imploring you: my father—do not deprive him of his hopes for his old age; my brothers, who would not want to live if I were taken from them; my in-laws; and these little children who do not yet recognise the danger but who will be pitiful if anything befalls me.
>
> transl. CH. CAREY

Aeschines introduces his relatives who are standing by on the podium according to their age group and summons up gestures in order to support this presentation (cf. the performative *deixis* ταυτὶ τὰ μικρὰ παιδία; also the possible *deixis* at his old father). This particular passage might also be colored by a tragic *hiketeia*; cf. the prologue of Sophocles' *Oedipus Tyrannos*, where the suppliants are also divided with age criteria: the first sub-group consists of nestlings still too tender for flight, the second of men bowed with age and the third of selected youths.[46]

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45 For this practice see Konstan (2000) 138; Serafim (2017).

46 *s. Oed. Tyr.* 15–19 ὁρᾷς μὲν ἡμᾶς ἡλίκοι προσήμεθα/ βωμοῖσι τοῖς σοῖς, οἱ μὲν οὐδέπω μακρὰν/ πτέσθαι σθένοντες, οἱ δὲ σὺν γήρᾳ βαρεῖς,/ ἱερεύς, ἐγὼ μὲν Ζηνός, οἵδε τ' ᾐθέων / λεκτοί "you

It is worth noting that sometimes in such pathetic passages pitiable performances go hand in hand with slander against the opponent. More specifically, Aeschines, in order to demolish Demosthenes' trustworthiness, calls him "a Scythian and a logographer", alluding both to his supposed foreign origin on his mother's side and to his professional activity as a speechwriter (2.180 καὶ μὴ τῷ λογογράφῳ καὶ Σκύθῃ παραδοῦναι). Aeschines culminates his pitiful performance by inviting the judges to share his emotional reaction towards Demosthenes. He insists that a person who must look into the sneering face of an enemy and hear his insults with his ears should be pitied (2.182 Πῶς δὲ οὐκ οἰκτρὸν βλέπειν ἐχθροῦ πρόσωπον ἐπεγγελῶντος, καὶ ταῖς ὠσὶ τῶν ὀνειδῶν ἀκοῦσαι;). This concluding comment is quite telling. Especially noteworthy is the emphasis on the visual and auditory signs (βλέπειν, ἀκοῦσαι) of the opponent's reactions, as well as the speaker's attempt to create pity for those who are the target of Demosthenes' sardonic laugh (ἐπεγγελῶντος). If we accept that this is an impromptu comment on Demosthenes' reaction on the platform rather than a later addition in a revised version of the speech, then the description of Demosthenes as a heartless prosecutor who does not feel pity for persons unworthy of suffering attempts to alienate him from the audience, to the extent that he does not share the common sentiments of pity.

A similar failure to respond to pitiable spectacles is described in Aristogeiton's case. The defendant is said to be a cruel and bloodthirsty person, who did not feel pity, when he saw the children and the ageing mothers of some of the defendants standing on the platform and beseeching him.[47] Such emotionally charged passages, in combination with Aeschines' previous participation in theatre as an actor, might have inspired Demosthenes to mock his inclination to tragic performance some three years later in his speech *On the Crown*, by calling him "Theocrines, the tragic actor" (D. 18.313 τραγικὸς Θεοκρίνης). In the same speech Demosthenes argues that Aeschines was never charged with delivering a funeral speech, because the Athenians did not like false tears, the weapon of a professional tragic actor (D. 18.287 μηδὲ τῇ φωνῇ δακρύειν ὑποκρινόμενον).

see the ages of us who are seated at your altars, some not yet able to fly far, others weighed down with age. I am the priest of Zeus, and these are chosen from the unmarried young".

47 D. 25.84 οὐχὶ παιδία, οὐχὶ μητέρας τῶν κρινομένων ἐνίων γραῦς παρεστώσας ὁρῶν οὗτος ἠλέει "The sight of the children of some of the defendants and their aged mothers standing in court did not move him to pity"; see Rubinstein (2000: 154).

2.3 *Rhetorical Banishment of Pity*

Arousal of pity in law courts was a matter susceptible to the opposite rhetorical tactics, known as ἐλέου ἐκβολή (banishment of pity; cf. Aphth. *Προγυμνάσματα* 10.17).[48] This sometimes occurred even with reference to theatrical effects, in the sense that similar devices were used with opposite goals. When Apollodoros, at the end of his speech *Against Neaera*, calls on the judges to look at Neaera's face (ὄψις) before reaching a verdict, his aim is the courtesan's conviction, either by attempting to warn judges against being seduced by the attractive courtesan and giving her a favourable verdict, or to stir in their minds the destructive power of beautiful women and associated myths: D. 59.115 τήν τε ὄψιν αὐτῆς ἰδόντες, ἐνθυμεῖσθε τοῦτο μόνον, εἰ Νέαιρα οὖσα ταῦτα διαπέπρακται.[49] This could be a reversed use of Hyperides' gesture of baring Phryne's breast. Concerning the practice of bringing forward children, even a humorous banishment of pity is sometimes suggested. Quintilian instructs how to dispel the judges' pity by witticisms like "Give the boy some bread to stop him crying".[50]

A very inventive device is used in a speech written by Dinarchus, concerning Demosthenes' involvement in Harpalus' affair. The prosecutor calls the judges not to pity Demosthenes' plea; instead, they should imagine their country bringing forward their women and children and supplicating them to punish Demosthenes:

> Din. *Dem.* 109: μὴ οὖν ἄχθεσθ' αὐτοῦ κλαίοντος καὶ ὀδυρομένου· πολὺ γὰρ ἂν δικαιότερον ἐλεήσαιτε τὴν χώραν, ἣν οὗτος εἰς τοὺς κινδύνους καθίστησιν τοιαῦτα πράττων, ἣ τοὺς ἐξ ἑαυτῆς γεγενημένους ὑμᾶς ἱκετεύει, παραστησαμένη τὰ ὑμέτερα τέκνα καὶ γυναῖκας, τιμωρήσασθαι τὸν προδότην καὶ σῴζειν ἑαυτήν …
>
> Do not feel grieved by his weeping and wailing; you would far more justly feel pity for the land, which this man lays open to danger by doing such things, which beseeches you who are born of it, by your wives and children, to punish the traitor and save it.
>
> transl. I. WORTHINGTON

48 Walton (1997) 45; Rubinstein (2013b) 135–136.

49 Cf. Reiske: "Neaerae ὄψις videtur fuisse πορνική"; also Carey ad loc: "her dress and degree of make-up would clearly mark her out as a courtesan". For a different interpretation see Kapparis (1999) ad loc.

50 Cic. *Att.* 15.9, *ap.* Quint. *Inst. Or.* 6.1.47 *Date puero panem ne ploret!*

This imaginative supplication (προσωποποιία combined with φαντασία ([Longin.] 15.1), a device suitable for emotional epilogues),[51] has a double function: firstly, it subverts in advance Demosthenes' expected plea, and secondly, it attempts to evoke anger against the traitor Demosthenes.

Another detailed rebuttal of the practice under discussion occurs in D. 21 (*Against Meidias*), where Demosthenes warns the judges in advance that his opponent will attempt to move them by bringing forward his children and by delivering pitiful words. Moreover, by comparing past and present, he reveals Meidias' contradictory behavior and assumes that he is currently planning to give a deceitful performance:

> D. 21.186–187 Οἶδα τοίνυν ὅτι τὰ παιδί' ἔχων ὀδυρεῖται, καὶ πολλοὺς λόγους καὶ ταπεινοὺς ἐρεῖ, δακρύων καὶ ὡς ἐλεινότατον ποιῶν ἑαυτόν … εὔδηλον δήπου τοῦθ' ὅτι καὶ νῦν ἂν διακρούσηται, πάλιν αὐτὸς ἐκεῖνος ὃν ὑμεῖς ἴστε γενήσεται. οὐ δεῖ δὴ προσέχειν, οὐδὲ τὸν παρόντα καιρόν, ὃν οὗτος ἐξεπίτηδες πλάττεται, κυριώτερον οὐδὲ πιστότερον τοῦ παντός, ὃν αὐτοὶ σύνιστε, χρόνου ποιήσασθαι.
>
> Now, I know that he'll have his children here too, and he will lament and make a long humble speech, weeping and making himself as pitiable as possible … surely it's obvious that, if he gets away with it even now, he'll once again become the same old Meidias that you all know. You must pay no attention, and not attach greater importance or credence to the present exigency, which is purposely fabricating for himself, than to all the rest of the time, of which you have personal knowledge.[52]
>
> transl. D. MACDOWELL

51 Cf. Cic. *Part.* 57; [Cic.] *Rhet. Her.* 2.47–50.

52 Cf. 21.99 τί οὖν ὑπόλοιπον; ἐλεῆσαι νὴ Δία· παιδία γὰρ παραστήσεται καὶ κλαήσει καὶ τούτοις αὐτὸν ἐξαιτήσεται· τοῦτο γὰρ λοιπόν. ἀλλ' ἴστε δήπου τοῦθ' ὅτι τοὺς ἀδίκως τι πάσχοντας, ὃ μὴ δυνήσονται φέρειν, ἐλεεῖν προσήκει, οὐ τοὺς ὧν πεποιήκασι δεινῶν δίκην διδόντας. καὶ τίς ἂν ταῦτ' ἐλεήσειε δικαίως, ὁρῶν τὰ τοῦδ' οὐκ ἐλεηθένθ' ὑπὸ τούτου, ἃ τῇ τοῦ πατρὸς συμφορᾷ χωρὶς τῶν ἄλλων κακῶν οὐδ'ἐπικουρίαν ἐνοῦσαν ὁρᾷ. "what other defence is left? Pity, you may say; he'll bring forward children and weep and ask you to let him off for their sake—that's what's left. But surely you realise that pity is appropriate for those who suffer some injustice which they will be unable to bear, not for those who are being punished for their crimes. And who would justly pity those children when he sees that the children of Straton here were not pitied by Meidias? These, besides their other troubles, can also see that no remedy for their father's misfortune is possible".

Demosthenes defends the power of law against pitiful performances and subverts Meidias' practice of bringing forward his children. He reminds the judges that it is through the laws that they enjoy their equal rights and every blessing, and not thanks to Meidias, nor the children of Meidias. Therefore, the judges' oath should weigh more than mercy elicited by deceitful performances. However, the orator retains the visual effects of the supplicating practice, though in a modified form: instead of children, Demosthenes brings forward the laws and supplicates the judges on their account! (φαντασία,[53] or *Deixis am Phantasma*):

> D. 21.187 ἀλλ' ὅταν οὗτος ἔχων τὰ παιδία τούτοις ἀξιοῖ δοῦναι τὴν ψῆφον ὑμᾶς, τόθ' ὑμεῖς τοὺς νόμους ἔχοντά με πλησίον ἡγεῖσθε παρεστάναι [καὶ τὸν ὅρκον ὃν ὀμωμόκατε], τούτοις ἀξιοῦντα καὶ ἀντιβολοῦνθ' ἕκαστον ὑμῶν ψηφίσασθαι. οἷς ὑμεῖς κατὰ πολλὰ δικαιότερον πρόσθοισθ' ἂν ἢ τούτῳ.
>
> When Meidias with his children requests you to give your votes to them, you must imagine me standing alongside with the laws, requesting and entreating each of you to vote for them. Many considerations make it right for you to side with the laws rather than with Meidias.[54]
>
> transl. D. MACDOWELL

This time the orator might not gesticulate towards the platform but at a different point, perhaps at the vase (*echinos*) containing sealed copies of laws, which were produced in the preliminary hearing (*anakrisis*).[55]

53 Cf. [Longin.] 15.1 ὅταν ἃ λέγεις ὑπ'ἐνθουσιασμοῦ καὶ πάθους βλέπειν δοκῇς καὶ ὑπ'ὄψιν τιθῇς τοῖς ἀκούουσιν; "when he who is speaking, by reason of inspiration and emotion, imagines himself to see what he is talking about, and produces a similar illusion in his hearers." The author also notes that the purpose of φαντασία in rhetoric is vividness (ἐνάργεια).

54 It is remarkable, however, that Demosthenes, in the very same speech, when attempting to remind the judges their duty, uses an argument which resists a personification of laws: 21.224 ἡ δὲ τῶν νόμων ἰσχὺς τίς ἐστιν; ἆρ' ἐάν τις ὑμῶν ἀδικούμενος ἀνακράγῃ, προσδραμοῦνται καὶ παρέσονται βοηθοῦντες; οὔ· γράμματα γὰρ γεγραμμέν' ἐστί, καὶ οὐχὶ δύναιντ' ἂν τοῦτο ποιῆσαι. "And what is the power of the law? Is it that, if any of you is attacked and gives a shout, they'll come running to your aid? No; they're written documents and they could not do that" (transl. D. MacDowell).

55 For this procedure see Canevaro (2013) 1–3.

3 Effectiveness vs. Respectability

Lofberg notes that "direct requests for pity were so common, that failure to beg for the judges' compassion was regarded as a sign of antagonism towards the popular courts and their methods".[56] This assumption seems to be confirmed by the surviving speeches, since most of the speakers who argue against this practice are known for their sharp criticism of contemporary democratic institutions. The best-known case is Socrates' defence speech, which was delivered at a trial conducted in 399 B.C. as a *graphē asebeias*, the implicit accompanying accusation being that of antidemocratic stance.

At first sight, Socrates gives the impression of following the norm of forensic rhetoric; in the proem (Pl. *Ap*. 17a–18a) he rejects the indictment, asserts that this is his first appearance in court (the *topos* of forensic inexperience) and expresses a plea for an unprejudiced verdict. In his *prothesis* (18a–19a) he argues, as do almost all defendants, that he is a victim of slander and that the prosecutors are lying.[57] However, in the course of his speech, he ironically subverts rhetoric norms at almost every step. More specifically, he refuses to follow the common practice of litigants who, in order to make a good impression and gain the approval of the jury, are accustomed to flattery. In addition, acting once more as a horsefly, Socrates introduces his criticism to the area of the court and castigates the mindset of the judges with an outspokenness unprecedented there.

But the most serious deviation from the rhetoric norms of the time occurs in the epilogue, where logographers (and Lysias par excellence) used to appeal to the pity of the judges. Socrates uses a proverbial Homeric passage, that he is not born of oak or rock but of men, so he has a family and three sons, one adolescent and two children. Nevertheless, he is not about to bring them forward and beg the jury to acquit him for the sake of his children.[58] Socrates'

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56 Lofberg (1976) 15.

57 Riddell (1973) xxi, who argues that the proem "may be completely paralleled, piece by piece, from the orators"; cf. Burnet (1924) 67: "(Socrates) was perfectly familiar with contemporary rhetoric".

58 Pl. *Ap*. 35b Ἐμοί, ὦ ἄριστε, εἰσὶν μέν πού τινες καὶ οἰκεῖοι· καὶ γὰρ τοῦτο αὐτὸ τὸ τοῦ Ὁμήρου, οὐδ' ἐγὼ 'ἀπὸ δρυὸς οὐδ' ἀπὸ πέτρης' πέφυκα ἀλλ' ἐξ ἀνθρώπων, ὥστε καὶ οἰκεῖοί μοί εἰσι καὶ ὑεῖς γε, ὦἄνδρες Ἀθηναῖοι, τρεῖς, εἷς μὲν μειράκιον ἤδη, δύο δὲ παιδία· ἀλλ' ὅμως οὐδένα αὐτῶν δεῦρο ἀναβιβασάμενος δεήσομαι ὑμῶν ἀποψηφίσασθαι "I, my very good fellow, surely also have some relatives. Indeed, I am not sprung, as Homer has it, 'from stick or stone', but from human beings, so that I have both relatives and, in particular, sons, Athenians, three of them, one by now adolescent and two still children; but

explanation is carefully formulated; the Homeric citation and the reminder that he has three young children might be considered a more subtle appeal to pity.[59] However, he definitely disapproves of the 'theatrical' devices, and risks causing a negative predisposition of the judges when he reminds them that in the past some members of the panel had brought forward children and appealed on behalf of them, in order to arouse their pity. Moreover, escalating his criticism of the current forensic practices, he condemns these entreaties as undignified and ridiculous: 35b ἀλλὰ τοῦτο αὐτὸ ἐνδείκνυσθαι, ὅτι πολὺ μᾶλλον καταψηφιεῖσθε τοῦ τὰ ἐλεινὰ ταῦτα δράματα εἰσάγοντος καὶ καταγέλαστον τὴν πόλιν ποιοῦντος ἢ τοῦ ἡσυχίαν ἄγοντος. "You should make it very clear that you will more readily convict a man who performs these pitiful dramatics in court and so makes the city a laughing stock, than a man who keeps quiet" (transl. G.M.A. Grube).

Socrates' words are in tune with his general criticism of the political and juridical institutions of his time. From the point of view of sophists and speechwriters, who make use of every available means of persuasion, including performative techniques, the defensive speech of Socrates would be regarded as a kind of counter-rhetoric, to such a degree that it seemingly turns away from the well-tried methods of persuading the jury. Moreover, his disparaging description (*ἐλεινὰ δράματα*) clearly suggests that these forensic entreaties have a theatrical function: *drama eisagein* is a theatrical term (cf. LSJ 4.II s.v. *eisagein*) and *eleinos* has strong tragic connotations. It would seem, therefore, that Socrates alludes to supplication scenes from tragedy, with which the judges must be familiar, as theatregoers.[60]

On the other hand, he remarks that these practices render the city ridiculous in the eyes of the Greeks. The disparaging word *katagelastos*, in particular, appears to suggest a contrast between reputation and performance. Socrates' comment that those who supplicate the judges in order to save their lives make the city a laughing-stock seems to be confirmed by comedy, in particular in the trial of Labes (Ar. *V.* 801–1008), where this practice offers ready material for satire. The particular scene, however exaggerating and distorting it may be, is supposed to be recognisable to the spectators.

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nevertheless I will not bring forward any of them in this place and beg you to acquit me".

59 Lewes (1993) 107 suspects that "he is disguising his appeal to pity so well that he can use the appeal and also claim credit for not using the appeal"; see also Walton (1997) 45–48.

60 For *hiketeia* scenes involving children in tragedy cf. A. *Suppl.* 193–203; S. *OC* 1607; E. *Alc.* 401–403; *Heracl.* 123–125; *HF* 986–995; *Andr.* 528–544; *Hec.* 338–341. See Naiden (2006) 71–92.

Socrates himself enters the court and performs his speech before the audience, a speech that had provisions for *hypocrisis* as well as other subtle forms of performance, regarding arguments and style. What Socrates seems to disapprove of is not performance *per se*, but the invasion of the theatre in the field of the law courts. His critical voice alludes to a contradistinction of truth and theatrical illusion with which these entreaties are associated. Such theatrical devises on the one hand entertain the judges and thus form a kind of *kolakeia*, flattery, of the type totally disapproved of by Socrates, and on the other hand may emotionally manipulate and deter them from an impartial judgment. Moreover, Socrates' disapproval of theatrical devices might be explained by his opinion that he, a philosopher, should not descend to the level of the uneducated crowd, which is prone to be deceived by illusions produced by theatrical means. Such an attitude also seems to exist in Gorgias' *Palamedes* epilogue, where the hero argues that appeal to pity is useful when addressed to a crowd, but is not appropriate before men of good repute.[61]

Besides, Socrates' criticism paradoxically has much in common with Cleon's reproach to the Athenians, because they have become "spectators of speeches, auditors of actions": Thuc. 3.38.4–7 αἴτιοι δ' ὑμεῖς κακῶς ἀγωνοθετοῦντες, οἵτινες εἰώθατε θεαταὶ μὲν τῶν λόγων γίγνεσθαι, ἀκροαταὶ δὲ τῶν ἔργων, … ἁπλῶς τε ἀκοῆς ἡδονῇ ἡσσώμενοι καὶ σοφιστῶν θεαταῖς ἐοικότες καθημένοις μᾶλλον ἢ περὶ πόλεως βουλευομένοις. "And you are yourselves to blame, for your management on these contests is wrong. It is your wont to be spectators of words and hearers of deeds … In a word, you are in thrall to the pleasures of the ear and are more like men who sit as spectators at exhibitions of sophists than men who take counsel for the welfare of the state" (transl. C.F. Smith).

In both cases, what is at issue is the responsibility of the audience to make a right decision, concerning either the interest of the city or the justice of a verdict. In both cases, also, unsuitable performances introduced in a wrong place (κακῶς ἀγωνοθετεῖν, σοφιστῶν θεαταῖς ἐοικέναι, ἐλεινὰ δράματα εἰσάγειν) are a serious obstacle to reaching the right decision. But there are also differences. While Socrates' disapproval of emotional rhetoric is in line with his philosoph-

61 33 οἶκτος μὲν οὖν καὶ λιταὶ καὶ φίλων παραίτησις ἐν ὄχλωι μὲν οὔσης τῆς κρίσεως χρήσιμα· παρὰ δ' ὑμῖν τοῖς πρώτοις οὖσι τῶν Ἑλλήνων καὶ δοκοῦσιν, οὐ φίλων βοηθείαις οὐδὲ λιταῖς οὐδὲ οἴκτοις δεῖ πείθειν ὑμᾶς, ἀλλὰ τῶι σαφεστάτωι δικαίωι, διδάξαντα τἀληθές, οὐκ ἀπατήσαντά με δεῖ διαφυγεῖν τὴν αἰτίαν ταύτην "Pity and entreaties and friend's intercession are useful when the judgment is to be taken by popular assemblies; but in front of you, who are reputed to be—and this is true—the first among the Greeks, it is not right to persuade you by means of pleas and pitiful appeals, but I have to rebut this charge with justice, by telling the truth, not by deceiving you". See Walton (1997) 48.

ical instruction, since he seeks a rhetoric based on truth, in Cleon's comment, on the other hand, there is much irony, in that Cleon was famous for his emotional demagogue rhetoric and was actually the most representative example of a spectacular orator.[62]

We should note that reluctance to beg for the judges' pity might have an antidemocratic overtone, giving the impression that one held the sovereignty of the judges as representatives of the Athenian citizens in contempt. In Socrates' case, in particular, where *graphē asebeias* was probably only the formal prosecution, the actual incentive of the prosecutors being Socrates' suggested rejection of democratic institutions, his refusal to follow a practice, which was not only expected but even desired by Athenian judges, actually confirms the implicit accusation of antidemocratic convictions. It seems that many Athenians shared the view, expressed by Aeschines some years later, that Socrates had associations with Critias, one of the leaders of the Thirty.[63]

Like Socrates, Isocrates seems to have taken a similar stance. In his speech *On Antidosis*, he first notes that he has seen many defendants supplicating and bringing their children before the judges, and then argues that such expedients are not appropriate for one of his age; besides, he considers it shameful to owe his life to another's plea rather than to his own arguments.[64] Another example was the orator Antiphon, who was considered one of the leaders of the short-lived oligarchic revolution of 411 B.C. (Thuc. 8.68.1–2). Antiphon also refused to supplicate the judges in his defensive speech.[65]

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62 For Cleon's tumultuous delivery cf. Ar. *Ach.* 381; *Eq.* 136–137 and *passim*.

63 Cf. Aeschin. 1.173 Ἔπειθ' ὑμεῖς, ὦ Ἀθηναῖοι, Σωκράτην μὲν τὸν σοφιστὴν ἀπεκτείνατε, ὅτι Κριτίαν ἐφάνη πεπαιδευκώς, ἕνα τῶν τριάκοντα τῶν τὸν δῆμον καταλυσάντων. "So then, men of Athens, you put Socrates the sophist to death, because it was found that he had taught Critias, one of the Thirty who overthrew the democracy" (transl. Ch. Carey). See Hansen (1995) 29–30; Fisher (2001) 319–320.

64 Isoc. 15.321Τοὺς μὲν οὖν ἄλλους ὁρῶ τοὺς κινδυνεύοντας, ἐπειδὰν περὶ τὴν τελευτὴν ὦσι τῆς ἀπολογίας, ἱκετεύοντας, δεομένους, τοὺς παῖδας, τοὺς φίλους ἀναβιβαζομένους· ἐγὼ δ' οὔτε [τὸ] πρέπειν οὐδὲν ἡγοῦμαι τῶν τοιούτων τοῖς τηλικούτοις, πρός τε τῷ ταῦτα γιγνώσκειν αἰσχυνθείην ἂν εἰ δι' ἄλλο τι σῳζοίμην ἢ διὰ τοὺς λόγους τοὺς προειρημένους ὑπ' ἐμοῦ καὶ γεγραμμένους. "I observe that when others who are placed in jeopardy here come to the end of their defence, they supplicate, they implore, they bring their children and their friends before the jury. I, however, consider that such expedients are unbecoming to one of my age; and, apart from this feeling, I should be ashamed to owe my life to any other plea than to the words which you have just heard".

65 Ant. *On the revolution*, fr. 3 Blass Περὶ τοῦ μὴ ἐλεεῖν ὑμᾶς ἐμὲ ἐδεήθη, δείσας μὴ ἐγὼ δάκρυσι καὶ ἱκετείαις πειρῶμαι ὑμᾶς ἀναπείθειν. "He besought you to have no pity on me, because he feared that I might try to move you by tears and entreaties". This fragment is attributed to

Moreover, it might be not accidental that Socrates and Antiphon, both seventy years of age, were forced to drink hemlock. As Socrates himself confesses in his second speech after the verdict, one of the things which contributed to his condemnation was his refusal to supplicate the judges and follow the unworthy practices used by the defendants of his time.[66] Antiphon was also sentenced to death and, although it is not certain what the crucial factors were, it is indicative that he lost the trial although his defence was considered the best of his time.[67] One might, therefore, suspect that his refusal to supplicate the judges played a part in the guilty verdict.[68] Even the legendary figure Palamedes, who formulated a similar critique in his defensive speech, was executed.

It is also worth noting that such forensic entreaties may have contributed significantly to the acquittal of the defendants, as far as we can judge from the surviving indications. Concerning the embassy trial, ancient tradition reports that Aeschines was acquitted, though it was a "technical victory" by a narrow margin of 30 votes.[69] On the other hand, we do not know the official verdict in Polystratus' trial, although there are some indications. If the hipparch mentioned in Xenophon's *Anabasis* 3.3.20 *Lykios Polystratou* is the speaker of the speech *For Polystratos*, then the possession of such an office ten years after the

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this particular speech by most editors; see Gagarin (1997) 251. However, Suda (s.v. ἱκετεία), assigns it to Antiphon, without mentioning a specific speech.

66 Pl. *Ap*. 38d–39b ἀλλ' ἀπορίᾳ μὲν ἑάλωκα, οὐ μέντοι λόγων, ἀλλὰ τόλμης καὶ ἀναισχυντίας καὶ τοῦ μὴ ἐθέλειν λέγειν πρὸς ὑμᾶς τοιαῦτα οἷ' ἂν ὑμῖν μὲν ἥδιστα ἦν ἀκούειν—θρηνοῦντός τέ μου καὶ ὀδυρομένου καὶ ἄλλα ποιοῦντος καὶ λέγοντος πολλὰ καὶ ἀνάξια ἐμοῦ, ὡς ἐγώ φημι, οἷα δὴ καὶ εἴθισθε ὑμεῖς τῶν ἄλλων ἀκούειν. "On the contrary, I have been convicted for shortage not of arguments but of brazenness and shamelessness and the willingness to tell you the sort of thing you would most like to hear: laments for me, and grief, and many other actions and words unworthy of me—or so I claim—the kind you are used to hearing from other men" (transl. M. Stokes). Socrates' refusal to use forensic entreaties was also a favourite subject in authors of the Second Sophistic, and in some rhetorical exercises he was even presented as one who did not defend himself; cf. Max. Tyr. *Dissertationes* 3.3 τί οὖν, εἴ τις σοι παρελθὼν διηγεῖτο, ὅτι … τελευτῶν τὴν Ξανθίππην ἀναβιβασάμενος κωκύουσαν, καὶ τὰ παιδία κλαυμυριζόμενα, διὰ τούτων ἁπάντων μετεχειρίσατο τοὺς δικαστάς, καὶ ἀπεψηφίσαντο αὐτοῦ, καὶ ᾤκτειραν, καὶ ἀφῆκαν; "Well, what if somebody approached you and told that … and at the end he brought forward Xanthippe wailing and the children whimpering, and so he manipulated the judges, who acquitted him and felt pity and released him?"

67 Thuc. 8.68.2 ἄριστα φαίνεται τῶν μέχρι ἐμοῦ ὑπὲρ αὐτῶν τούτων αἰτιαθείς, ὡς ξυγκατέστησε, θανάτου δίκην ἀπολογησάμενος "he manifestly made the ablest plea for his life of all men up to my time in defending these very acts".

68 Isocrates never delivered his speech *On antidosis*, and therefore did not jeopardise any negative verdict.

69 Carey (2000) 89; cf. Serafim (2017).

conduct of the trial is compatible with the maintenance of a high social status, since a mercenary force reproduces the hierarchy of a city to some degree. If, therefore, the impending financial catastrophe resulting from Polystratus' condemnation had occurred, it seems improbable that the members of his family would still have had the means to purchase and keep a war horse and undertake the office of hipparch, since the period 410–401 B.C. was too short for the family to recover in. Moreover, the quality of the family tombstones, discovered in the Keratea (IG ii^2 12499, 12658 and 12967), suggests that they belong to a prosperous family. It seems, therefore, that the defendant was acquitted and his family survived and continued to be involved in public life over the following years.[70] Finally, even in Aristophanes' domestic "Trial of Dogs", where court procedure and atmosphere is—however exaggeratedly—imitated, the judge Philocleon seems to be moved by the spectacle of Labes' puppies whimpering on stage, and, despite his original intentions, acquits the defendant.[71]

4 Conclusion

The bringing forward by defendants of children and relatives was much more than a routinely expected practice in Athenian law courts. It allowed speakers to incorporate live performative elements and invest them with strong emotional appeals. Besides, it was a field where speechwriters could innovate, set out different themes and techniques, and prepare and instruct their audiences to feel the desired emotions. "Theatrical" devices as visual effects, emotional delivery and tragic resonances were often mobilised in these rhetorical performances. The pointed use of the language in several passages is indicative of gestures and movements on the podium, which usually support emotional appeals. However, it seems that during the revision of these speeches some performative and theatrical elements that were not thought to work in a written version of the initial speech were probably eliminated. On the other hand, these performances would not contain excessive theatrical devices, since obvious theatricality could subvert their function and give opponents the opportunity to describe them as false.

Besides, it seems that there was always a discrepancy between effectiveness and respectability in these forensic entreaties. More specifically, over the

70 See Apostolakis (2003) 40–41 and 59–60.

71 Though he does not confess it: ἐγὼ γὰρ ἀπεδάκρυσα νῦν γνώμην ἐμὴν/ οὐδέν ποτέ γ' ἀλλ' ἢ τῆς φακῆς ἐμπλήμενος (*V.* 983–984) "I just burst into tears, and in my opinion the only reason was that I'd filled myself with that lentil soup".

course of time these forensic entreaties, especially in public cases, indicated a kind of respect toward the sovereignty of the Athenian people, since they offered them a spectacle, which on the one hand diverted them as theatregoers, and on the other, tickled their vanity. Accordingly, refusal to follow these forensic entreaties and the accompanying questioning of their respectability might be interpreted as a highbrow and contemptuous attitude towards the jury and, possibly, as an anti-democratic stance.

CHAPTER 10

From the Stage to the Court: Rhetorical and Dramatic Performance in Donatus' Commentary on Terence

Beatrice da Vela

Aelius Donatus' *Commentary on Terence* (4th cent. AD) is the most complete late antique exegesis of Terence's plays, commenting on five of them (*Andria, Eunuchus, Adelphoe, Hecyra, Phormio*) in full.[1] Scholars have often used this work to shed light on Terence's words and lines which are not sufficiently clear, or to reconstruct extra-textual features (particularly concerning delivery and performance). Besides commenting on Terence's language and explaining the meaning of obscure references in the text (in a way which is very similar to another great late-antique commentary, that of Servius on Vergil), Aelius Donatus is particularly interested in performative elements, especially the different uses of the voice and the gestures of different parts of the body (primarily hands and face).[2] The grammarian is able to describe extra-textual features of Terence's text in detail, showing awareness of and sensibility to the peculiarity of drama as a genre.[3] What remains to be determined is the

1 From now on, texts from the Donatus' *Commentary on Terence* will be indicated by the abbreviation Don., followed by the abbreviation for the name of Terence's play (e.g. Don. *Ad.* shall be interpreted as Donatus' commentary on Terence's *Adelphoe*). To avoid ambiguity, each time Terence's text is quoted, the abbreviation of the play is preceded by the abbreviation of the author (e.g. Ter. *Ad.*).

2 An example of a note on delivery: Don. *Ad.* 35.2 *Quae cogito quibus et hoc sic pronuntiandum est, ut horrere uideatur ipse cogitationem suam* ("the things I imagine, the fears that I have. And this must be pronounced in a way so that Micio seems horrified by his own thought"); an example of note on gesture: Don. *Ad.* 127.5 [*Et*]] *hoc gestu abeuntis uel abituri pronuntiatur* ("*And* this is spoken with the gesture of someone who is leaving or is going to leave").

3 It is highly problematic to know the sources of Donatus' remarks on performance, if Donatus found some of these explanations already in the works of his predecessors (in the *Commentary on Adelphoe* Donatus names as his references three earlier scholars, Asper, Probus and Nigidius Figulus), if he took inspiration from contemporary productions of Terence or other authors (this is the hypothesis of Kragelund [2012]) or finally if some descriptions are Donatus's own interpretation of the text. For the purpose of this chapter, however, it is not necessary to develop this point further.

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purpose that such detailed descriptions of delivery and actions had in Donatus' *Commentary* (for a general introduction to the question see Demetriou (2014)).

This chapter aims to investigate thenotes on performance in the *Commentary on Terence*, with particular reference to the section dedicated to the *Adelphoe*; I briefly survey the different extra-textual features explored by Donatus; I then intend to discuss the nature and use of these notes and to demonstrate that their aim was didactic, and must be linked to the rhetorical and didactic settings in which and for which the *Commentary on Terence* was created. In other words, this chapter intends to show how information about what should be a dramatic performance—especially notes concerning delivery and gestures—are more strictly linked to the oratorical performance and serve the didactic purpose of the *Commentary*. That is, these notes do not mean to clarify the meaning of Terence's text as much as to provide basic training for the wannabe speakers; to offer them the opportunity to acquire some rudimentary skills through both analysis of Terence's comedies and practice (reading aloud Terence's passages). Terence's text was particularly suitable for use in school because it was relatively readable and at the same time it provided a strong connection with oratory. The rhetorical nature of Terence's prologues has received great attention, but recently Gesine Manuwald (2013) has explored the deeper interconnection between early Latin drama and oratory, showing that there are strong mutual influences (as far as arguing that early Latin drama should be used as a source for early Latin oratory).

Moreover, the use of dramatic techniques in the training of the public speaker is not Donatus' invention; Quintilian had already used dramatic techniques extensively in his *Institutio Oratoria*, as Nocchi (2013) has illustrated. In the *Commentary on Terence*, as I will show, Donatus seems to draw his interpretations of Terence's performance from Quintilian's theory.

1 The Didactic Nature of the Commentary on Adelphoe

Before examining the performance-related notes in Donatus' *Commentary*, it is important to better define the exact genre of the *Commentary* itself and place it in its context, as this consideration will be of great help in understanding the proper value of the notes. The didactic nature of commentaries and *scholia* in general and of those on dramatic texts in particular is an accepted assumption, although it is often generic: "the proper understanding of an utterance can depend on, or gain from, having a sense of the tone in which it is spoken. However, whereas a modern reader would usually be content with knowing

the intonation that is most appropriate to the passage under consideration, an ancient reader was often expected to reproduce it in his delivery. In fact, the proper delivery of literary texts was an important aspect of ancient education. Consequently, the *scholia* abound in instructions and discussions that deal with the non-verbal question of delivery".[4]

This is true both for Greek and Latin *scholia* and commentaries, but the singularity of the *Commentary on Terence* is that, beside verbal elements of communication, it also preserves non-verbal information. Moreover the fact that the *Commentary* is a continuous text, of which a very relevant portion contains original material,[5] gives us a unique overview of how a grammarian structured the approach to a text, which contents he chose and which he instead discarded, how the information was distributed and, finally, what was the relationship between the grammarian and his desired public.

The *Commentary* is primarily a work conceived for educative purposes, and it is a part, as demonstrated by Holtz (1981, 27–29), of a larger "pedagogic system", composed by the two *Artes grammaticae*, the *Commentary on Terence* and the *Commentary on Vergil*, now lost. It is important to remember that Donatus' didactic system consists of complementary parts: the *Artes* represent the theory (comparable to modern grammars) and the two commentaries have been composed for the purposes of practice, meaning that Donatus identifies in Virgil's and Terence's texts the same grammatical, syntactical and even rhetorical concepts he originally exposes in his treatises. Donatus' *Commentary on Terence*, in particular, given the dramatic nature of the commented text, was particularly suitable, as recalled by Nünlist above, to teach how to read literary texts out loud.[6] Despite the use of silent reading, which was probably widespread by Donatus' time,[7] the practice of reading out loud correctly, was

4 Nünlist (2009) 349.

5 The text is not free from textual difficulties, but I believe that strong negative statements about this status are unfair to the transmission: it is true that the text carries some material interpolated in a successive phase of the text before its re-appearance during the Carolingian Renaissance, but it is also true that most of the features that have been considered as flaws by positivist critics are to be considered strictly related to the didactic nature of the work.

6 In this direction the notes on correct punctuation must be understood, cf. e.g. Don. *Ad.* 213 *Ille uerberando usque incerta distinctio est: uel 'uerberando usque' uel 'usque defessi'* ("he by beating the other, until. The punctuation is uncertain: either we punctuate 'uerberando usque' or 'usque defessi' "), where Donatus points out that the text, given without punctuation as customary, could be subject to different interpretations, either "beating me continuously" or "until we were both tired".

7 The question is summed up in Johnson (2010) 30–31; see also the works of Starr (1991), Gillard (1993).

one of the traditional skills to be acquired during one's studies at the grammarian's school.[8]

2 The Nature of the Notes on Performance

If we scan the *Commentary on Terence* for performance-related notes, two consistent groups can be established.[9] Annotations dealing with the non-verbal aspects of performance, which include remarks on the intonation of the voice and the feelings conveyed by it, the pitch and the phrasal stress (the so-called paralanguage), form the first group. This is the larger set of notes. A smaller group of notes focuses on every other kind of non-verbal communication, particularly facial expression (with emphasis on the eyes, as we shall see shortly), gestures of the hands and body movements.[10] A purely dramatic performance

8 The use of the term "school" referred to ancient education is imprecise as the different stages of education, as demonstrated by Kaster (1997, 28) were not as formally rigid as they are nowadays in Western Culture.

9 Madyda (1953) classified all these notes on performance according to the kind of expression they convey. He speaks of different kinds of feelings (all expressed through delivery), then he goes on to talk about imitation, facial expression, gesture, tone of voice and mimics when reporting someone else's speech. Although this classification may be questionable, the conclusion offers an important observation for understanding the perspective of the grammarian, stating that the primary interest of the work is rhetoric. This statement clarifies an important feature of the *Commentary*, the fact that theatre is not an interest in itself, but mostly serves the purpose of presenting particular elements needed during the educative path to the readers. Another attempt to sort out the range of performance-related notes was made by Basore (1908).

10 Inside this second group, there is a considerably small number of non-verbal notes which deal with a particular kind of movement: the notes on characters entering and exiting from the stage. There are considerably fewer notes that treat movement on the stage, to or from (in the whole *Commentary on Adelphoe*, for example, there are just eight passages). Many concentrate more on the absence/presence on the stage rather than on movements, like at Don. *Ad.* 487 (*Iuno Lucina fer opem! bona procuratio poetae, ut et uox parturientis pro testimonio succedat ad inflammandum Demeam. et nota puellarum, quae in comoediis honestae sunt et ex amore ducuntur, aut nullam in scaena esse aut rarissimam uocem Iuno Lucina, help me!* "This is a good preparation on part of the poet, so that also the cry of the young woman giving birth would, as evidence, succeed in irritating Demea. And observe that the voice of young women, who incomedies are honest and led by love, is never or very rarely heard on stage"): this kind of notes refers to pure literary conventions. In the *Commentary on Adelphoe*, only in one instance Donatus explicitly refers to the location of the stage, but this passage is unfortunately corrupt,

would make use equally of paralanguage and of other non-verbal forms of communication (pertaining to the realms of kinesics, proxemics, haptics and also appearance). Donatus' preference for paralanguage over the rest is not without significance. Although this theoretical division is useful for our purposes, Donatus does not drawn it himself and often forms of communication from both groups appear together in the same note. An example will illustrate how the two groups coexist:

> Profundat perdat. haec sic pronuntianda sunt, ut ostendatur gestu nolle quod loquitur.
>
> DON. *Ad.* 134.2

> Let him squander and ruin himself. These words must be pronounced so that with the gesture it is demonstrated that he does not want what he says.

Demea utters this line in the second scene of the first act. The two brothers, Demea and Micio, are quarrelling about Aeschinus, the son of Demea adopted by Micio. Demea is accusing his brother of spoiling the boy and of being a careless and negligent father. Micio replies to his brother that by interfering on Aeschinus' education, Demea is almost asking back the son he gave up for adoption (Ter. *Ad.* 130–132). At the top of his exasperation, Demea overreacts with the reply cited in the lemma.

If we look at the distribution of performance-related notes, however, it emerges that Donatus was more interested in analysing verbal rather than non-verbal features; this is not surprising, as ancient theorists, although recognising that both verbal and non-verbal communication are essential parts of the *actio*, tended to give preference to the voice. A typical case like this is Quintilian, who

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Don. *Ad.* 511 *Bono animo fac sis Sostrata meminisse debemus, quod dixit* (*v. 506*) *'duc me intro ad Sostratam' et quod hoc 'intro in proscaenio' est para to pithanon, non post scaenam. nam aliud significat* (*Phorm.* V 9, 65) + *'eamus intro'* + *ubi dicitur* (*v. 980*) *'intus despondebitur, intus transigetur, si quid est quod restet'; illud enim interius agitur extra omne proscaenium*; "Do this with a good disposition, Sostrata, we must remember what he said (Ter. *Ad. 506*) 'come with me inside to Sostrata' and that this 'inside the proscene' is against the plausibility, not behind the scene. For elsewhere it means 'go inside' where it is said 'inside it will be arrange, inside will be discussed, is something remains to be settled'; for that is acted more inside, completely out of the proscene"). The motivation of this note seems to clarify an aspect of the text that could otherwise be potentially ambiguous.

clearly stated in book 11 of the *Institutio Oratoria* that the voice is the overriding element, because gestures, with few exceptions, are subordinated to the voice itself.[11]

Donatus made several remarks on the way the voice must be used and gave examples of a diverse range of emotions that can be conveyed through an accurate use of delivery:

> In qua ciuitate aliter pronuntiandum est. id est presse ac leniter, ne faciat illud Tullianum (Catil. 1.9) "pro di immortales! ubinam gentium sumus? quam rem publicam habemus? in qua urbe uiuimus?"
>
> DON. *Ad.* 685.2
>
> In which country. This must be pronounced in a different way, i.e. smoothly and precisely, so that it does not become that famous Ciceronian passage "Good gods! Amongst which people are we? What kind of State do we have? In which city do we live?"

This line belongs to Micio. In the fifth scene of the fourth act, Micio is confronting Aeschinus with what he had done to Pamphila; this sentence introduces Micio's retelling of his son's crimes.

Here Donatus finds a parallel in wording between Terence's *Adelphoe* 685 and Cicero's *Against Catiline* 1.9. The two clauses share the same syntactic structure (a rhetorical question) and have a similar meaning. The context, however, is radically different: if Cicero speaks those words in the middle of a violent invective against Catiline, Micio's intention is to reprimand his son but only mildly so. Only the tone used for each passage may possibly convey the difference between the two. A harsh tone may be suitable for the speech against Catiline, but would be inappropriate for a speech by Micio because it is in contrast with one of the old man's main characteristics, his mildness (cf. Don. *Ad. praef.* 3.6.).

Donatus describes precisely how the clause shall be pronounced, using two adverbs, *presse* and *leniter*. *Presse* means "clearly articulated", suggesting that each word must be pronounced separately; *leniter* properly refers to the

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11 *Cum sit autem omnis actio, ut dixi, in duas divisa partis, uocem gestum que, quorum alter oculos, altera aures mouet, per quos duos sensus omnis ad animum penetrat adfectus, prius est de 'uoce' dicere, cui etiam gestus accommodatur.* (Quint. *Inst.* 11.3.14) "Delivery, taken as a whole, is divided, as I said, into two parts, voice and gesture. One appeals to the eye, the other to the ear, the two senses by which all emotion penetrates to the mind. We must first speak about voice, to which gesture also has to conform." (transl. Russell).

tone, meaning "without harshness" (cf. Cicero, *Off.* 1.133 *alterum imitatio presse loquentium et leniter*).

Sometimes a simple instruction about the delivery of a line can helpfully explain the meaning of the original text, as in the following case:

> Homini misero plus quingentos colaphos flebiliter pronuntiandum. Hoc enim exprimitur incusare eum in alieno facto fortunam suam.
>
> DON. *Ad.* 199.3

> Poor me, more than five hundreds blows. This must be pronounced tearfully: for this means that he blame someone else for his misfortune.

Donatus employs the adverb *flebiliter* to capture Sannio's mood: the procurer has just been beaten up by Aeschinus' slave, Parmeno, after Aeschinus kidnapped the courtesan, Pamphila (Ctesipho's lover).

Sometimes Donatus describes the quality of delivery by describing a rhetorical figure (e.g. with irony):

> Vah leno nomen sacrilegum, nomen iniustum: iniquitatem agitat, iustitiae patrocinatur! totum hoc εἰρωνικῶς pronuntiandum est.
>
> DON. *Ad.* 187.3

> Oh leno! Sacrilegious name, unjust name: he works with injustice, and defends the justice! All this sentence must be pronounced with irony.

The tag "with irony" (εἰρωνικῶς) instructs the readers on how to appreciate Aeschinus' address to Sannio (the procurer has just wished for justice to be done to him).

We noted earlier that the second component of performance, according to Quintilian, is gesture. In book 11 of the *Institutio Oratoria*, Quintilian introduces gestures as a powerful tool to accompany and underline the meaning of verbal communication (11.3.65–66[12] and 67); the main distinction between verbal

12 *Quid autem quisque in dicendo postulet locus, paulum differam, ut de gestu prius dicam, qui et ipse uoci consentit et animo cum ea simul paret. is quantum habeat in oratore momenti, satis vel ex eo patet, quod pleraque etiam citra uerba significat. quippe non manus solum, sed nutus etiam declarant nostram uoluntatem et in mutis pro sermone sunt.* [...] *contra si gestus ac uultus ab oratione dissentiat, tristia dicamus hilares, adfirmemus aliqua renuentes, non auctoritas modo uerbis, sed etiam fides desit.* "I postpone for the moment, however, the question of what is required for particular oratorical contexts, in order to speak first of

and non-verbal communication is that the latter, according to Quintilian, is immediate (he compares its immediate effect to the power of visual communication). This is particularly important in a setting where verbal communication may fail due to external reasons beyond the speaker's control (for example the settings). Quintilian also warned against the discrepancy between words and gestures, which causes a confusing effect on the audience, thus weakening the speaker's message.[13]

Non-verbal communication—and gestures in particular—are very useful to help convey the meaning of words. Gestures comprehend the movements of several parts of the body: head and face (particularly the eyes and the eyebrows), the hands, the shoulders, the arms, the back and the feet. This code was even more important in times where there was no amplification for the voice of the public speaker.

Quintilian deals with all the kinds of gestures named above, whilst Donatus is primarily interested in facial expressions and hand movements. The reason is clear: the different expressions of the face and the positioning of the hands are the most important non-verbal communication skills that a wannabe orator must acquire. They are in fact an excellent tool to make the message clear and understandable even when words are not understood. This was already Quintilian's opinion (*Inst.* 11.3.72).[14] Donatus believed that feelings can be powerfully read on the expression of the characters, as in the case of *Ad.* 265.5:

Gesture, which itself conforms to the voice and joins in obeying the mind. The importance of Gesture for an orator is evident from the simple fact that it can often convey meaning even without the help of words. Not only hands but nod show our intentions; for the dumb, indeed, these take the place of language. [...] On the other hand, if Gesture and facial expression were out of tune with speech, and we looked cheerful when what we were saying was sad, or shook our heads when asserting something, our words would lack not only authority but credibility." (transl. Russell).

13 Quintilian ignored here the particular case where verbal and non-verbal messages may be contradictory on purpose.

14 *Dominatur autem maxime uultus. hoc supplices, hoc minaces, hoc blandi, hoc tristes, hoc hilares, hoc erecti, hoc summissi sumus: hoc pendent homines, hunc intuentur, hic spectatur, etiam antequam dicimus: hoc quosdam amamus, hoc odimus, hoc plurima intellegimus, hic est saepe pro omnibus uerbis*. "But the face is sovereign. It is this that makes us humble, threatening, flattering, sad, cheerful, proud, or submissive; men hang on this; men fix their gaze on this; this is watched even before we start to speak; this makes us love some people and hate others; this makes us understand many things; this often replaces words altogether" (transl. Russell).

> occidi nihil uideo. mire hoc uerbo apparet in uultu lenonis et spem mortuam et restinctum gaudium.
>
> I am dead. I see nothing. Marvelously with this word it appears that in the pimp's face that hope is dead and joy extinguished.

Sannio, after hearing Aeschinus coming on stage addressing someone as *sacrilegus*, believes that the young man is looking for him again, perhaps with the intention of giving him a second beating, thus it comes naturally that anxiety and horror will show on his face. But the expression can also accompany the words:

> At ut omne reddat propter illud. quod dixerat Syrus (v. 241) "diuiduum face". et probatum est completumque, quod ait (v. 209) "cupide accipiat faxo". et hoc ipsum cum trepida et uultuosa supplicatione pronuntiandum est.
>
> DON. *Ad.* 280.1
>
> But make sure that he gives everything back. This is because of what Syrus had said (Ter. *Ad.* 241) "make it half" and this is approved and completed, because he says (Ter. *Ad.* 209) "I accept it willingly, I will do that". And this phrase itself must be uttered as a supplication, with a trembling voice and a begging facial expression.

In the second scene of the fourth act, Aeschinus just sent his brother Ctesipho into the house where the courtesan is now, together with his slave Syrus. The young man wants to settle the question of Sannio's payment (Sannio is the pimp from whom Aeschinus kidnapped the courtesan). Sannio says the quoted line: the pimp is afraid that he will not receive a proper compensation. Donatus stresses the procurer's anxiety because it signals a change in Sannio's attitude. He is no more the boisterous and self-confident pimp of Ter. *Ad.* 162–166, but he is a scared man, afraid of losing all his money and being beaten up again (*trepida* and *uultuosa* are the expressions that describe Sannio's mental state).

Another important feature of performance is the use of the orator's eyes, because according to Quintilian the soul of the speaker is visible through them (Quint. *Inst. Orat.* 11.3.75).[15] For Quintilian, the expression of the face and the

15 *Sed in ipso uultu plurimum ualent oculi, per quos maxime animus elucet* [...] "In the face itself, the most important feature is the eyes. The mind shines through especially in these." (transl. Russell).

gestures should normally be pointed in the same direction, unless the speaker wants to convey a sense of rejection, repulsion or even disgust (*Inst.* 11.3.70).[16] In Donatus' *Commentary on Adelphoe* a case illustrates precisely the importance of eyes as a means to strengthen words:

> Nullum huius simile ⟨factum⟩. hoc cum admiratione indignantis est pronuntiandum et ardentibus in Micionem oculis; et subaudiendum est "esse" aut "inueniri".
>
> DON. *Ad.* 96.2

> He does nothing like that. This must be pronounced with the wonder of the someone who is offended and with the eyes angrily starring at Micio; and "esse" or "inuenire" must be supplied.

This note refers to the first quarrel between Micio and Demea, who is the one speaking these words. Donatus describes Demea's tone as *cum admiratione indignantis*, but the note directs the focus on the eyes; staring at someone with scorching eyes is certainly a powerful way to convey anger and disappointment, making the message utterly clear.

Still there are instances where words and gestures (even though Donatus did not specify what lines he was referring to) are not in agreement, but contradict each other; as a result it is difficult to extract from them the real intention of the speaker. An example is the passage from Don. *Ad.* 134.2, cited above. If taken at face value, Demea's words indicate his indifference towards the destiny of Aeschinus, the son he gave up for adoption; however, the statement does not express Demea's real intention, as he will continue to care for both Aeschinus and Ctesipho during the whole play.[17]

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16 *Aspectus enim semper eodem uertitur quo gestus, exceptis quae aut damnare aut concedere aut a nobis remouere oportebit, ut idem illud uultu uideamur auersari, manu repellere.* "The eyes are *always* turned in the direction of the Gesture, except when we have to reject, [concede,] or distance ourselves from some point: in this case we seem simultaneously to turn our face away from something and to push it away with our hands" (transl. Russell).

17 The fact that Donatus was dealing with a play, brings up the issue of masks: it is not possible to know if, when referring to facial expressions, Donatus was referring to actors wearing masks or not. In the *Commentary on Terence* there are instances (e.g. Don. *Ad. Praef.* 1.6 *haec sane acta est ludis scaenicis funebribus L. Aemili Pauli agentibus L. Ambiuio et L. ⟨Minucio Prothymo⟩, qui cum suis gregibus etiam tum personati agebant*; "this play was staged during the funeral games of Lucius Aemilius Paulus; it was staged by Lucius Ambiuius and Lucius Minucius Prothymus, who played it themselves, wearing masks,

As we remarked earlier, gestures, performed by several parts of the body, are a part of performance. Quintilian discusses a brief list of gestures made with hands (and occasionally hands and arms) (*Inst.* 11.3.92–104), clearly stating that there are as many gestures as words (*Inst.* 11.3.85: *cum paene ipsam verborum copiam persequantur*), and therefore it is impossible to classify them all. Dorota Dutsch (2007) clearly showed that some illustrations found in Terence's manuscripts represent exactly some of the gestures described in the *Education of the orator*, proving once again a connection between dramatic (especially Terence's) and rhetoric performance (even though the origin of the illustrations remain uncertain). It is not at all surprising, then, that some of the gestures which are found both in the illustrations of Terence's manuscripts and in Quintilian's catalogue are comparable to those described by Donatus. A particular example is the gesture of the hand that Quintilian attributes to Crassus (via Cicero), which describes a position of the fingers used to indicate and accuse (*Inst.* 11.3.94).[18] Quintilian's description applies very well to the gesture intended by Donatus in this passage:

> Et hoc tibi et tu pronuntiandum est intento digito et infestis in Micionem oculis; nam hoc agi stomacho adversum dissimulatores solet.
>
> DON. *Ad.* 97

> And this "tibi" and "tu" must be pronounced pointing the finger and the eyes against Micio; for this is what is usually done by someone who is in anger against the concealers.

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with their crews") where masks-usage is clearly referenced, but in most cases it refers to past performances, except *An.* 716.1 (*et uide non minimas partes in hac comoedia Mysidi attribui, hoc est personae femineae, siue haec personatis uiris agitur, ut apud ueteres, siue per mulierem, ut nunc uidemus*), discussed by Kragelund (2012). Thus I am inclined to Donatus thinking of performance without a mask, his indications could be applied by students reading out loud in either case.

18 *At cum tres contracti pollice premuntur, tum digitus ille quo usum optime Crassum Cicero dicit explicari solet. Is in exprobrando et indicando* (*unde ei nomen est*) *ualet, et adleuata ac spectante umerum manu paulum inclinatus adfirmat, uersus in terram et quasi pronus urget, et aliquando pro numero est*; "When three fingers are doubled under the thumb, the finger which Cicero says Crassus used so well is extended. This finger is important in reproach and in pointing things out (which is why it has its name). Turned slightly downwards, with the whole hand raised and turned towards the shoulder, it expresses strong statement; pointed down towards the ground, facing downwards, as it were, it insists on a point. Sometimes also indicates a number" (transl. Russell).

The context is the same of the passage cited before (Don. *Ad.* 96.2), which immediately precedes this annotation. Donatus highlights again the use of the eyes whereto this time the movement of a finger is added. Demea, who was introduced at the beginning of the play as uncultivated and prone to anger (Don. *Ad. praef.* 1.9 describes him as *durus* "hard" and *rusticus* "uncouth"), is the one making the inelegant pointing gesture.

Particular attention is given to a gesture called *gestus seruilis*. Quintilian describes it as the raising of the shoulders and the consequent shortening of the neck; he criticises it as an extremely vulgar action. (*Inst.* 11.3.83).[19] Donatus uses the *gestus seruilis* only sparingly, for example:

> Hui perfortiter. hoc gestu seruili et nimis leuiori personae congrue dictum est.
>
> DON. *Ad.* 567.2
>
> Oh superbravo! This is said with a slavish gesture and a tone truly apt to a person of lower rank.

Syrus says the line in the second scene of the fourth act. The slave is speaking with Demea, telling him the fictitious deeds of his son Ctesipho, crafted to please Demea's ego (Demea's falls completely into the slave's trap); the scene has the purpose to show to the audience the excesses to which Demea's morale can lead and it is highly comic; therefore it is fitting that the words will be accompanied by an exasperated mimic.

Although the description fits well with Terence's text, there is an apparent contradiction: how could this type of performance be useful for the future orator and be taught in school, given that it attracted such harsh criticism, according to Quintilian?

We can solve the problem, considering the nature of Quintilian's work. Quintilian's final aim is to outline the perfect public speaker, an ideal model who future speakers should look up to. In doing so he may have idealised the figure. Moreover, if he criticises this technique so harshly, it is possible that it was common. It may be the case, then, that Donatus did not find the *gestus*

19 *Umerorum raro decens adleuatio atque contractio est: breuiatur enim ceruix et gestum quendam humilem atque seruilem et quasi fraudulentum facit, cum se in habitum adulationis, admirationis, metus fingunt*; "Rarely it is becoming to shrug or hunch the shoulders, because this shortens the neck and produces a gesture of humiliation and servility, suggesting hypocrisy, because people use it when they are pretending to flatter, admire, or fear" (transl. Russell).

seruilis so reprehensible as to erase it from the realm of possible gestures, but he confined it to the depiction of certain characters and certain situations.

So far we have illustrated the way in which Donatus deals with performance elements, both verbal and non-verbal, of Terence's text, inserting them into his handbook. To summarise we can say that this treatment shows two tendencies: 1) Donatus was highly selective in terms of the information he conveyed and concentrated firstly on verbal features, then on non-verbal features; 2) Donatus limited the examination of non-verbal features to those elements which are chiefly rhetorical, as the parallels from Quintilian's theory on oratorical performance shows, and could be used in public speaking, whilst he mentioned other features more typical of the dramatic performance only when necessary to the comprehension of the text. These assumptions leave open a series of interrelated questions regarding the origins of these notes and their usage in the general context of Donatus' work.

3 Performance, Theatricality and the Training of the Future Public Speaker

Theatricality is here intended as a part of the overall performance of an orator (or an actor); in particular theatricality concerns all those aspects that are often shared by the oratorical and dramatic performance, defined by the term *actio* (cf. p. 4). The parallels that can be traced between Donatus' performance-related explanations and Quintilian's theory of *actio* clearly show the rhetorical milieu, which generated both works; moreover it is likely that Donatus was familiar with the work of his predecessor. The *Institutio* and the *Commentary on Terence* are both didactic works, although their ideal audience was different (Quintilian addressed the future orator and his father, though it is not clear to whom Donatus addressed his commentary: to other scholars or directly to the students?[20]).

The link between Quintilian and Donatus, however, is not only to be found in their didactic intention and in the Roman rhetoric-oriented schooling culture, but also in that phenomenon, labelled as theatricality, which can be roughly

20 The letter to Munatius indicates that the *Commentary on Vergil* (there is no prefatory letter for the *Commentary on Terence*) was directed to an unidentified *nouus Grammaticus*, which seems to indicate an inexperienced teacher, but Jerome (*Adu. Ruf.* 1.6) talks about the commentaries being addressed to the students; it may as well be that by the term *nouus grammaticus* Donatus is referring to a student approaching grammar for the first time.

defined as the insertion and usage of elements typical of the dramatic performance in other contexts, such as oratory. In particular, Quintilian's handling of dramatic performance techniques has received a lot of attention.[21] In Quintilian's treatise drama as a genre and theatre as a social and cultural phenomenon have a great importance in the training of the orator. As Francesca Romana Nocchi (2013) has recently illustrated, the training of the future orator was also achieved by means of dramatic examples, which served to illustrate the technique of the *actio*. It is then possible that Donatus' performance-related notes did not just serve to acquire the skills and competences needed to correctly read Terence's plays out loud (comedies were particularly suitable to be studied because they represent different kinds of characters and emotions cf. Quint. *Inst.* 1.8.7–8), but may also have served to practice verbal and non-verbal kinds of communication, to be used not only in reading works of others, but to deliver original material (fictive or real speeches). Quintilian himself recommended the aspiring orator to learn passages from canonical authors by heart, not just for their wording (so to embellish their own writing with cultivated citations), but also in order to have a series of stock examples on the effect that a particular kind of *actio* may have on the audience (Quint. *Inst.* 1.8.10–12). Passages from Terence may well have served this purpose. The usage of elements of theatricality (a category of analysis which in itself clarifies the tight interconnection between dramatic and oratorical performances) in Roman education went as far as entering into teaching practice, even if the precise role of dramatic performance in school is difficult to determine.[22] Quintilian suggests using the comic actor as a teacher in the classroom (*Inst.* 1.11.1–14) to exemplify the different kinds of voice, tone and gesture which may be used, although a careful distinction must be made between the *orator* and the *actor* (*Inst.* 1.11.1–3). However, we can hypothesise that Quintilian's concern to stigmatise an excessive dramatic delivery style in oratory may mean that such a practice was not uncommon at his time, as argued by Fantham (2002, 375).

Some scholars (e.g. Thomadaki 1989) have argued for some forms of representation taking place inside the educative environment; Thomadaki postulated the use of actors in Donatus' classes to perform some sort of *mise-en-scéne*

21 E.g. Cousin (1973); Fantham (1982); Graf (1991), Pérez Goméz (1990); Fantham (2000) and (2002); Petrone (2008); Dutsch (2013).

22 There is no agreement about whether parts of Terence's comedy were still represented or not during Donatus' time. Some scholars, e.g. Kragelund (2012), have argued that some passages of the *Commentary on Terence* would demonstrate that parts of Terence's dramas were still performed.

of the text read during the lessons,[23] but, besides mere speculation, there is no evidence for that. It seems more likely that, rather than having a professional actor or a troupe of actors performing during the grammarian's classes, the students themselves practised the reading of literary texts with the help of the commentaries. Reading a text like Terence's, more linguistically accessible than more rhetorically elaborated texts, such as Cicero's speeches, would have been suitable for both teaching grammar and introducing some performance techniques to students who had not yet acquired sufficient skills in either composition or reading. Terence's comedies had the advantage of being relatively understandable in terms of register while at the same time presenting some short speeches carefully crafted according to rhetorical principles. Finally, the attention given to some of the gestures shared by actors and orators, such as those listed by Quintilian and also found in the illustrations of Terence's manuscripts, could provide examples of movements to be used during a speech.

We definitely know that by Donatus' times commentaries were read by the students, as Jerome recalls in a passage, listing among the classic schoolbooks also Donatus' *Commentary on Terence* (*Adv. Ruf.* 1.16).[24] The *Colloquia scholica* in the *Hermenumata pseudo-dositheana* provides us with a narrative of the didactic practice in everyday schooling, from which two main points emerge: the use of commentaries to be read in class and the well-established practice of form of recitation and performance (involving even basic grammatical rules).[25]

23 Thomadaki (1989) 366: "dans les classes universitaires à l'époque de Donat on pratiquait la lecture de comédies de Térence, une lecture qui insistait sur la bonne diction et su la récitation plus o moins styliséé. Pour cette raison, les professeurs faisaient appel à des acteurs professionels choisis sourtout dans le domaine de la comédie plutôt que dans celui de la tragedie".

24 Hier. *Apol. Adu. Ruf.* 1.16 *Puto quod puer legeris Aspri in uergilium ac sallustium commentarios, uulcatii in orationes ciceronis, uictorini in dialogos eius, et in terentii comoedias praeceptoris mei donati, aeque in uergilium, et aliorum in alios, plautum uidelicet, lucretium, flaccum, persium atque lucanum. argute interpretes eorum quare non unam explanationem secuti sint, et in eadem re quid uel sibi uel aliis uideatur enumerent*; "I think that you as boy had read Asper's commentaries on Vergil and Sallust, Vulcacius' on Cicero's speeches, Victorinus on Cicero's dialogues, and the commenataries on Terences plays by Donatus, my teacher, and other commentaries on other authors, such as Plautus, Lucrece, Horace, Persius and Lucan. Consider why the interpreters of those writers did not follow one interpretation only, and why in the same way they list what seems advisable to them and to others". (transl. by author).

25 *Monac.* 2 *inter haec iussu magistri surgunt pusilli ad subductum et syllabas praebuit eis unus de maioribus, alii ad subdoctorem ordine reddunt, nomina scribunt, versus scripserunt, et ego*

A further element points toward the use of the performance-related notes of *Commentary on Terence* as a guideline for the future public speaker, which has to do with the conception of knowledge and learning in ancient education. As much as the traditional positivistic conception of school put an emphasis on notions and acquiring information, ancient education was much more practice-driven. Winterbottom (1992) has shown the value of declamations in building up the performance-related skills that the students would need to give a proper speech, shedding a new light on the value of declamations (not only as an exercise in rhetorical writing, but also in performance). Winterbottom (1992) convincingly made his case by pointing out that the aim of education, beside learning to read and write, was also to train a small number of students for professional success (mainly as higher officers in the army, for administrative positions or for a career in politics), which would require a good preparation in all aspects of oratory. Besides, only the acquisition of (transferable and specific) skills would justify the expensive costs of education (Kaster (1997) 25).

An objection could be raised that this kind of training is more suited for the teaching of the *rhetor*, rather than the grammarian, but this can be easily disproved. Declamations were certainly part of this curriculum, but before being able to perform one, students could benefit from practising with shorter and simpler texts: the notes on Terence could then be well suited for an early stage of this kind of training. If grammarians also offered this kind of training and did not limit themselves to the interpretation of the texts, this would explain Quintilian's complaint about grammarians stepping on rhetoricians' toes (*Inst.* 2.1.2):

> Et hi (grammatici) non satis credunt excepisse quae relicta erant (quo nomine gratia quoque habenda est), sed ad prosōpopeias usque ⟨et⟩ ad suasorias *in quibus onus dicendi uel maximum est*, inrumpunt.
>
> The *grammatici* do not think it is enough to pick up what was left for them (and we should indeed be grateful to them for this), but make inroads as far as *prosopopoeiae* and *suasoriae*, in which the burden of speaking is very great.
>
> transl. RUSSELL

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in prima classe dictatum excepi. "Meanwhile, as the teachers orders, the little ones get up to [practise] letters, and one of the bigger [pupils] gave [gr. Told] them syllables. Others produces [their work] in order to the teaching assistant: they write names, they [gr: or they] wrote verses. And I, in the first class, received an exercise [to do]". (transl. Dickey (2012)).

Riché (1962, 42–43) also shed light on the similarity between the *grammaticus*' and the *rhetor*'s teaching. We must consider that the use of literature in the classroom of the former always had a utilitarian approach, as Bonner rightly stressed.[26] Moreover, it has been shown by Booth (1979), and Kaster (1983; 1997, 24), that ancient education did not follow a linear progression determined by a curriculum and the age of the students, but was much more fluid.

Quintilian himself, in the passage quoted, described as a good practice to learn by heart passages that differ in intonation, in order to have ready-made examples of the different feelings the voice can convey. From this perspective, the notes containing non-verbal remarks become paradigmatic examples of instructions for reading practice. The selective use of non-verbal information that we have highlighted before—Donatus giving strong pre-eminence to gestures that find parallels or belong to those categories of gestures that, according to Roman rhetorical theory (in particular Quintilian's), are acceptable in the orator's performance—points in exactly the same direction: these instructions were conceived to illustrate examples of the use of non-verbal language in a rhetorical context.

In this sense, suggestions of some kind of 'performance' for the purposes of education might seem quite plausible, but it was not material primarily meant for the actor, but for the orator. It has been convincingly pointed out, for example by Winterbottom (1982), that Roman education was more practical and, in modern terminology, more devoted to equip the privileged receivers of an education with the skills necessary to occupy positions amongst the élites (in the administration, in politics and in military ranks).

4 Conclusion

In conclusion, Donatus' *Commentary on Terence* is an important document to understand the way ancient education worked. It exemplifies well the relationship between stage and court, drama and oratory. This is particularly evident when analysing Donatus' notes on performance, which reveal close connections with Quintilian's *Institutio Oratoria*. The careful selection of performance-related details made by the grammarian seem to show that he was primarily interested only in those elements, which could have been useful for oratory.

26 (1977) 212: "At the letter (scil. when the students were more advanced in training), the poets, like the orators and the historians, were perused with the objective of eliciting and imitating those features of style and treatment which were likely to be useful for the future orator".

Donatus' choice to comment on Terence's comedies, which contained several rhetorical elements, may not have been neutral, indicating Donatus' intention not only to explain some works of the grammarians' canon, but also to provide some performance-related skills to his students. Mainly, Donatus' *Commentary on Terence* shows that theatricality was a very important element of ancient education, as it constituted an essential tool in acquiring the essential skills for a future public speaker. Finally, the *Commentary on Terence*, compared with other sources and didactic texts, may help us shed light on how theatricality was used in teaching and learning practices.

CHAPTER 11

Oratorical Performance in Pliny's *Letters*

*Kathryn Tempest**

Introduction

Oratory forms a central aspect of Pliny's self-representation in his letters: from his well-documented emulation of Cicero, to the description of his own, largely successful, performances in the court and senate, we are continually reminded that this was the arena in which he excelled.[1] Yet time and again we are frustrated by a shortage of published speeches when we try to assess the success of Pliny's oratory on its own terms; that is, as a performative genre.[2] In the case of the one speech that does survive, Pliny's *Panegyricus*, the published version was a largely expanded and polished rendition of its original counterpart.[3] Even though it offers valuable evidence for Pliny's stylistic qualities, the *Panegyricus* does not provide a typical example of his actual oratory; belonging to the genre of epideictic oratory, it is markedly different from the forensic and deliberative speeches which Pliny habitually delivered.[4] To be sure, the discerning reader can trace his use of rhetorical figures, preferences and argumentative

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1 On the centrality of oratory in Pliny's letters, see Weische (1989), Mayer (2003). Pliny's emulation of Cicero is discussed in Gibson and Morello (2013) 83–99. While the focus is on Cicero *qua* epistolographer, some comments on Pliny's admiration of Cicero's oratory are relevant.

2 Thus, e.g. Fantham (1997) 124: "Pliny was atypical for his time: he represents the literary side of oratory and worked as hard on the written versions of his speeches after delivery as he had before the event, expanding them to clarify their content to an external audience and inviting his friends to criticise successive drafts. But this was not how the Romans judged oratory".

3 By his own admission, it was "fuller and more elaborate" (*spatiosius et uberius*, 3.18.1).

4 Innes (2011) provides a useful overview of the epideictic features and arrangement of the

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techniques in the *Letters*, which may be able to provide one route towards a fuller understanding of Pliny's oratorical artistry.[5] But this chapter will also suggest another method: it will begin by surveying the emphasis placed on oratorical delivery in Pliny's letters before examining how he establishes himself both as a teacher and as an exemplary advocate. It will then move towards a more hypothetical reconstruction of his actual performances to demonstrate that the *Letters* enable us to understand more about the *topoi* and techniques Pliny used, the effects he sought to create, and how he interacted with his audience.

The attempt is necessarily speculative and certain problems of methodology arise in trying to gauge aspects of performance from Pliny's *Letters*. Leaving aside unhelpful speculations on the relationship between the delivered and the published speeches, which need not concern us here, we may note that Pliny largely focusses on his triumphs rather than his failures.[6] One might object that he thereby skews the picture of the importance of delivery. For it is easy to imagine a scenario in which Pliny, elated by the proceedings of a successful (or even only partially successful)[7] trial, could have attributed more than was strictly owed to his own personal performance.[8] Yet, in some ways, the focus on his triumphant appearances is also conducive to the experiment because we can understand what Pliny felt had been particularly powerful in a given speech. Consequently, the aim of this chapter is not to ascertain precisely how Pliny actually delivered any given oration, but, rather, to demonstrate the imaginability of his performances. In so doing we can appreciate

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Panegyricus. For a detailed analysis of Pliny's style in the speech, see Gamberini (1983) 377–448 and Hutchinson (2011).

5 See, e.g., Cugusi (2003) on Pliny's letters as evidence for his rhetorical ideals. For individual letters treated as examples of Pliny's oratorical art see Williams (2006) on 3.14, and Berry (2008) on 6.16 and 6.20.

6 As many scholars have cautioned, the Pliny we see in the letters is a carefully constructed image of how he wanted to be seen: on Pliny's self-presentation, see e.g. the (opposing) discussions of Leach (1990) and Riggsby (1995), reconciled by Henderson (2002 and 2003).

7 In 9.13, for example, Pliny describes the circumstances of the speech he had published *de Helvidi ultione* ('About the vindication of Helvidius'); elsewhere referred to as the *In Certum* ('Against Certus'). This was an attack on Helvidius' persecutor, Publicius Certus, which Pliny had delivered in the senate, allegedly to great acclaim. The concession that Pliny did not actually achieve his desired result (to bring Certus to trial) is subordinated to the larger moral victory he claims for himself (*Et relationem quidem de eo Caesar ad senatum non remisit; obtinui tamen quod intenderam*, 9.13.22).

8 There were certainly external factors which determined the outcome of a trial, as Pliny himself admits at 5.20.3, discussed below (p. 186).

what aspects of his oratory Pliny understood to have been particularly effective, and how they contributed to his successes as an orator.

1 The Contexts and Importance of Oratorical Performance

That Pliny's *Letters* offer a healthy corrective to the perceived deterioration in oratory during the Imperial period has long been observed.[9] Far from the famous picture of decline painted by Tacitus in the *Dialogus*, Pliny's descriptions of oratorical life paint a vibrant and bustling scene. They provide glimpses into the arenas in which an imperial orator might speak: acting as an advocate in criminal trials, the Centumviral court, which was mainly concerned with inheritance and property disputes, or in the senate.[10] He gives a sense of the atmosphere surrounding the forensic trials and senatorial debates at which he was present, either as a speaker or spectator.[11] Whatever one thinks about the standard of oratory in the Imperial period (and there were critics),[12] it is nevertheless clear that some trials *did* still have the power to attract a huge crowd.

Even if the establishment of the principate had severely intruded upon and limited the nature and scope of political oratory,[13] oratorical success in the forensic arena largely brought the same rewards as it had done in Cicero's day: it remained a way of supporting one's friends or harming enemies, of helping clients or provincials, and of gaining fame and distinction.[14] Oratory even

9 The fullest, systematic attempt to collect and count all the references to Pliny's own career, as presented in his *Letters*, can be found in Dominik (2007) 334–337.

10 For a full reconstruction of the locations and layouts of the courts see Bablitz (2007).

11 For descriptions of trials, see e.g. 4.16.1–2, 6.33.2–4. Other contemporary writers confirm the idea that public interest in oratory had not abated: Martial states that 'all the courts are fervent with litigation' (*Ep.* 2.64.7); when Marcus Regulus is speaking, he adds that there is applause and crowds packing in and around the centumviral court (*Ep.* 6.38.1–6); Juvenal paints a lively scene of judicial activity in *Sat.* 16.36–47.

12 Even Pliny criticises his contemporaries' lack of critical judgement in assessing oratorical merit at 2.141. For a more positive appraisal of the changes in oratorical style and the debates surrounding it in Pliny's day, see Dominik (1997).

13 Thus Pliny laments the constraints under which his oratory operated at 9.2.3; cf. Tac. *Ann.* 4.32. For a fuller, and more positive, reconstruction of the role of oratory in the Imperial period, see Rutledge (2010).

14 Pliny lists among his own reasons for undertaking trials: "when instructed to support provincials" (*adesse prouincialibus iussi*, 2.11.2), as "a service to his friends" (*utilitas amicorum*, 2.14.14), "to establish a precedent" (*ad exemplum pertinentes*, 6.29.1), and "occasionally to achieve fame and glory" (*Aequum est enim agere non numquam gloriae et famae*,

offered new opportunities for political advancement in the Imperial period, insofar as it could bring an orator to the Emperor's attention.[15] Different kinds of cases also arose to test a senator's ability to persuade his peers, such as discussions on honours for the Imperial family or debates on moral legislation.[16] Even though much of this oratory took place within the walls of the senate house or the Centumviral court, there were still also occasions on which an orator might have had to address a large crowd in the open air.[17] Within all of these contexts, a high-quality performance would have been critical to the success of the overall speech.

To be sure, Pliny's comments on performance in the *Letters* continually reiterate the importance of *actio/pronuntiatio*. He makes more than one reference to the story of Aeschines' recital of the *De Corona* at Rhodes, for example; namely that, upon receiving applause for his performance, Aeschines informed his audience that it had been far better when Demosthenes had delivered it (2.3.10–11).[18] Such an emphasis on the performative context is never lost in Pliny. In fact, he even uses this anecdote to assert the superiority of the delivered speech as a model of instruction over its published counterpart: "although the version you read may be more incisive", Pliny admits to his correspon-

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6.29.3). His reluctance to prosecute his enemies, however, may be inferred from 9.13.2–4, in which he takes care to detach such a motive from his attack on Certus in the senate, as well as the fact that he never prosecuted Regulus (cf. 1.5.15–17; 13.2.4); also see the various practical benefits of oratory put into the words of Aper by Tacitus (*Dial.* 5).

15 Cassius Dio 68.10.2 notes that Trajan reportedly presided as judge in public cases; as Gibson (2011, 107) comments, this 'will have increased the prestige available to orators'. It should be stressed, however, that winning the attention of an Emperor may not always have been a good thing: consider, for example, the supposed vicissitudes in Pliny's own career (4.7; cf. *Pan.* 95.3). I say 'supposed' because there is no firm evidence to suggest that he did suffer; rather he appears to have advanced well during the reigns of Domitian, Nerva, and Trajan. An independent source for Pliny's career is a fragmentary inscription recording the official posts he held (*CIL* v. 5262 = *ILS* 2927, s.230). For further discussion, see Noreña (2011) 39–40.

16 Examples can be readily found in Tacitus' *Annals*: on honours, see e.g. *Ann.* 1.14; on laws, see *Ann.* 1.72–74. A fuller overview is provided by Rutledge (2010) 117–120.

17 E.g. Pliny records delivering a speech at the opening of the library of Comumin 1.8. Elsewhere, he recalls speaking at a criminal trial in front of a large gathering (7.6).

18 This version of the story was commonly reported in antiquity (cf. Cic. *De or.* 3.213; Plin. *HN* 7.110; Quint. *Inst* 9.3.7; Val. Max. 8.10; St Jerome *Ep.* 53.2.2). However, elsewhere, the anecdote is that Aeschines had delivered his speech *Against Ctesiphon*, and that upon the Rhodians' astonishment that he had lost the case, he replied that they should have heard Demosthenes speaking against him ([Plut.] *X orat.* 840D–E; Phot. *Bibl.* 264).

dent, "the impressions made by the delivery (*pronuntiatio*), facial expression (*uultus*), bearing (*habitus*) and gestures (*gestus*) of a speaker remain deeper implanted in the mind" (2.3.10).

In this letter (2.3), Pliny is describing the declamatory exercises of an itinerant rhetor, Isaios. Even though Isaios is a teacher and not an orator *per se* (the distinction is made clear), it is a telling point that Pliny lays by far the most emphasis on the performative aspect of his speech: his *pronuntiatio, uultus*, *habitus* and *gestus*.[19] In addition, Pliny hints at a number of other factors that affect the delivery of a speech. For instance, he tells us that Isaios always spoke *ex tempore*, even though his speeches conveyed the impression he had spent a long time preparing them (2.3.1). He structured his speeches effectively, performing as was appropriate in each part, from the *prohemium* to *conclusio* (2.3.3). And, in an echo of Ciceronian thought, Pliny measures Isaios' overall success against the three main tasks of oratory: to instruct (*docere*), charm (*placere*) and move (*mouere*)[20]—although he adds that it is difficult to tell at which he excelled. These qualities are matched by Isaios' *incredibilis memoria* (2.3.3–4), a pre-requisite for effective delivery. The critical terms used by Pliny here are catchwords in the rhetorical writings of Cicero and Quintilian, and they are ones which he could expect his reader to recognise. Within the confines of this one letter, then, we find some of the most general principles of rhetorical theory carefully selected and highlighted.[21]

In short, Pliny presents Isaios as the rhetorical *exemplum* par excellence. Since his aim in the letter is to convince a recalcitrant student to attend Isaios' declamatory performance, this feature is perhaps not surprising. But the letter is instructive for a number of reasons. To begin with, it reminds us of the vibrancy and popularity of oratory and rhetoric in the imperial period; it flourishes not just in the courts and senate, but also in the declamation halls. Secondly, it highlights a characteristic aspect of Pliny's letters: their didactic agenda and his use of *exempla* to educate and instruct his reader.[22] The lesson is clear: to become as good as an Isaios, a budding orator must study and practise constantly. Thirdly, we can see in this letter a hint of the importance that Pliny attaches to the art of oratory more generally throughout the collection.

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19 For the centrality of these elements to theories of *actio* (performance), see *Rhet. Her*. 3.19–28; Cic. *De or*. 3.213–217 and Quint. *Inst*. 11.3 (*passim*).

20 E.g. Cic. *Brut*. 185—although the critical terms there, as elsewhere, are *docere, delectare* (not *placere*) and *mouere*.

21 For a fuller analysis of this letter and its rhetorical content, see Whitton (2013) 89–109.

22 On Pliny's use of *exempla* and his didactic agenda, see Griffin (2007) 468–469.

A re-reading of this letter, however, calls attention to a feature, which has been less commented upon by scholars: namely, the emphasis Pliny places on the performative aspect of oratory. For, in praising Isaios' skill as a rhetor, Pliny has also caused his reader to reflect on the essential ingredients for effective oratorical delivery: memory, extemporisation, face, gestures and deportment. In what follows I hope to demonstrate that such a focus on performance is not an isolated occurrence within Pliny's *Letters*; in fact I would go so far as to suggest that Pliny initiates a discourse on delivery within the *Letters*, which is always connected to his didactic agenda. For, throughout the collection, and especially in those letters addressed to junior senators, Pliny assumes the role of a teacher and authoritative figure. He does not mean to write a rhetorical treatise; far from it. Quintilian had already done that, and in detail. But if we accept the general principle, succinctly expressed by Veyne, that the *Letters* are, among other things, "a handbook for the perfect Roman senator",[23] they retain their value as evidence for oratorical performance in Imperial Rome. Pliny's *Letters* present an alternative handbook, as it were, in which he uses his own experience to draw practical lessons from which his students may learn.

2 Pliny as Orator, Teacher and Exemplum

Pliny was already a senior senator by the time he published the earliest letters in the collection. Educated at Rome by the great professor of rhetoric Quintilian (6.6.3), Pliny had been pleading in the courts since he was just eighteen years old (5.8.8). As a newcomer to the senate and a *nouus homo*, he had consequently used his oratorical skills to secure a reputation and place in society. In 1.18 Pliny details the highly-charged circumstances of a trial which first drew attention to his as an orator: his successful defence of Junius Pastor in the Centumviral court. In 9.13 he records his first major success in a senatorial debate.[24] And in 6.29 Pliny lists a number of the high profile trials in which he had been successful subsequently.[25] He had represented the Baeticans first against Bae-

23 Veyne (1990) 9.

24 This was not a formal speech in the Senate, but Pliny later edited and published it as if it had been: this was the 'speech' in vindication of Helvidius Priscus, *Against Certus* (cf. 7.30, 9.14, and 9.18).

25 Other speeches delivered by Pliny, not mentioned in 6.29, include: *Pro Attia Viriola* (6.33); speeches *Against Probus, Hispanus, Fuscus* and *Priscus* in connection with the charges against Caecilius Classicus (3.9). In 4.17 he anticipates making a defence speech *For*

bius Massa and later against Caecilius Classicus.[26] Together with Tacitus, he had prosecuted Marius Priscus on a charge of extortion.[27] He defended Julius Bassus and, recently (at the time of writing the letter), he had spoken on behalf of Varenus.[28] This experience had provided Pliny with a remarkable insight into the practical requirements of oratory: "Only now do I finally see, albeit still dimly, what qualities the good orator should possess," he remarks in one of his letters (5.8.8).

As Roland Mayer has convincingly demonstrated, references to Pliny's speeches in the *Letters* help to secure interest in Pliny the Orator in five main ways: (i) they draw attention to his success as a pleader;[29] (ii) he uses the letters to provide extra details about the speeches he has delivered, such as the background history, the nature of the occasion or the result;[30] (iii) he anticipates and refutes possible indifference or criticism of his published speeches;[31] (iv) he relays the details of speeches or other oratorical activity he has not published;[32] (v) he uses the *Letters* to guide the reader in their response to his oratory.[33] But Pliny's *Letters* do more than serve as an 'insurance policy' for the survival of the speeches;[34] they are a distinctive part of their authors' literary activity and, as such, they contribute to Pliny's larger goal of self-immortalisation.[35] In the *Letters*, Pliny leaves behind a textual record in which he establishes himself as an *exemplum* for imitation.[36]

Of particular significance for our purposes is that, in the act of engineering his own exemplarity, Pliny provides important information pertaining to his own ideas about oratorical performance. Two letters in particular serve well to introduce Pliny's thoughts: 4.7 and 6.11. In the first, Pliny establishes a negative *exemplum* in his description of his arch-rival Marcus Regulus.[37] In the second,

Corellia. There are also some speeches delivered in trials of unnamed defendants: a criminal case (murder) in 7.6 and a case in the Centumviral court (4.16).

26 *Against Massa*, cf. 7.33; *Against Classicus*, see 3.4 and 3.9.

27 For more detailed discussion of the trial of Priscus, see 2.11 and 2.12.

28 *For Bassus* is described at 4.9 and the *For Varenus* is discussed at 5.20, 6.5, 6.13 and 7.6.

29 E.g. 2.18, 4.16, 4.26, 6.7, 6.11, 8.13, 9.31, 9.23.

30 E.g. 2.11, 2.12, 4.9, 5.20, 6.5, 6.13, 6.33, 5.20, 7.33, 9.13.

31 E.g. 6.33, 8.10.

32 E.g. 7.6, 8.14.

33 E.g. 1.2, 3.21, 4.10, 4.11, 4.13, 4.14, 4.15, 4.16, 9.1, 9.2.

34 Thus Mayer (2003) 227, 229, 233.

35 Morello (2003) 207; Fitzgerald (2007).

36 On this topic see, in particular, Gazich (2003).

37 On the more general portrayal of Regulus as a "bad senator" in the collectio, see Hoffer (1999) 55–91.

Pliny praises the achievements of two of his own pupils, Fuscus Salinator and Ummidius Quadratus. Between them, these two texts establish some of the basic requirements of the good orator via the positive and negative models they introduce. At the same time, they reveal how Pliny artfully establishes himself as the *exemplum* of oratorical performance.

In 4.7, Regulus is presented unequivocally as an example of bad oratory (*Exemplo est Regulus*, 4.7.4–5):

> He has weak lungs (*imbecillum latus*), clouded utterance (*os confusum*), a hesitant tongue (*haesitans lingua*), the dullest imagination (*tardissima inuentio*) and a non-existent memory (*memoria nulla*)—in short, nothing but the brain of a madman (*nihil denique praeter ingenium insanum*)—yet by his shamelessness and that very craziness he has attained a reputation as an orator. So to describe him Herennius Senecio turned Cato's definition marvellously on its head: 'An orator is a wicked man unskilled at speaking' ('*Orator est uir malus dicendi imperitus*').

In this letter to Catius Lepidus, Pliny mocks Regulus' recent performance of a work he had written to commemorate his deceased son. With no sympathy spared for the occasion, Pliny expands his criticisms of Regulus' speech into a wider-ranging attack on his oratory generally.[38] His lungs, speech and imagination are not up to the task. He has no memory; elsewhere, Pliny tells us that Regulus had to read his speeches off a pre-prepared script.[39] The only talent he possesses is that of a mad man. His lack of physical stamina, mental capacity and eloquence all combine so that, by the end of the letter, Regulus has become the vignette of the failed orator—a *uir malus dicendi imperitus*.[40]

Regulus' failings as an orator find their counterpart in 6.11. However, rather than indulge in excessive self-praise—a hazard of which even Pliny seems to have been acutely aware[41]—Pliny embeds the positive qualities of oratory in a description of two of his students, Salinator and Quadratus (6.11.1–3):

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38 A slightly more positive (and posthumous) presentation of Regulus' oratory is provided in 6.2.

39 This additional detail is provided in 6.2.2.

40 The attack on a rival's oratorical ability was, of course, a standard *topos* in Roman invective, and we need not necessarily accept Pliny's assessment at face value. Tacitus makes Aper speak approvingly of Regulus in the *Dialogus*, associating him with *eloquentia* itself (Tac. *Dial.* 15.1); Pliny acknowledges Regulus' reputation for eloquence at 1.5.2, albeit in a rather tongue-in-cheek aside.

41 See for example 1.8 in which he states his concerns over publishing the speech he delivered

> Both showed remarkable honesty (*probitas*) and integrity unimpaired (*constantia salua*). They combined a handsome appearance (*decorus habitus*), accents of pure Latin (*os Latinum*), manly tones (*uox uirilis*), retentive memory (*tenax memoria*), great originality and judgement to match (*magnum ingenium, iudicium aequale*). All this delighted me, as did the fact that they looked to me as their guide and teacher, and gave the hearers the impression that they sought to follow in my footsteps.

A fundamental contrast is made evident from the outset: Salinator and Quadratus are morally good men. They each have the core of what it takes to be an orator in the quintessential definition of the term: *uir bonus dicendi peritus*.[42] Counter to the clouded speech of Regulus, Quadratus and Salinator both possess tones of pure Latin; their manly voices would over-power Regulus' stammering tongue. Particular emphasis is also placed on their "great natural talent" and "equal measure of wisdom" by a chiastic arrangement of the Latin words: *magnum ingenium, iudicium aequale*. However, aside from the moral qualities and manliness of the orator—upon which scholarship has already devoted much attention[43]—we should note again how Pliny focuses his attention on the skills required in the delivery of the speech: a good memory, powerful lungs and pleasing bearing.

And yet it is striking that Salinator and Quadratus are not *exempla* in the way that Regulus was specifically identified as such. Rather we get the impression that they are model students and not exemplary advocates yet. As a closer reading of this letter reveals, the *exemplum* of oratory is Pliny himself, whom everyone regarded as the young men's guide (*rector*) and teacher (*magister*).[44] This thinly-veiled comment on his own exemplarity, expressed through the eyes and opinions of third party members, is made more explicit in the conclu-

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at the official opening of the library at Comum: "it makes me seem rather self-aggrandising and carried away by myself" (*est enim paulo quasi gloriosius et elatius*, 1.8.5).

42 According to the famous dictum of Cato; Quint. *Inst*. 12.1.1, Sen. *Contr*. 1, pr. 10.1.

43 On the moral qualities of the orator, as presented by Quintilian and Pliny, a seminal article is Winterbottom (1964). Much has been written since then, and there have been many challenges to Winterbottom's original thesis, which he has usefully reviewed in Reinhardt and Winterbottom (2006). On the 'manliness' and masculinity of the orator, see the important studies by Gleason (1995), Enders (1997), Richlin (1997, 2011), Gunderson (2000).

44 The same conclusion has been reached independently by Roy Gibson, who is currently working on a commentary on Book 6 of Pliny's *Letters*. I am grateful to Roy for sharing his ideas in their pre-published format.

sion to the letter: "what more could I wish for than that I should be proposed as an *exemplar* for men who are following the right path?" (6.11.3).

This is the only occasion in the *Letters* where Pliny directly refers, in his own voice, to his personal exemplarity, and it is a telling point that he sees himself specifically as an *exemplum* of effective oratory.[45] What is more, by praising the skills of his protégés, Pliny reflects indirectly on his own prowess as both an orator and teacher: if he has taught his students how to speak in manly and Latin tones, we can assume that Pliny excelled in that area. If their memories are tenacious, we can infer that Pliny has trained them well and that he attributes importance to that particular task. If their bearing and appearance is decorous, they are following in the footsteps of their teacher—to use Pliny's own metaphor.[46] In short, we are led to believe that Pliny has nurtured their natural talents and he has coached his students in the qualities he himself possesses: especially *vox* and *memoria*. This is the first and simplest strategy by which Pliny insinuates his own excellence as both orator and teacher in the *Letters*.

Autobiographical elements in the *Letters* provide a second way for Pliny to create an *exemplum* of himself. Even though most of the advice Pliny provides on delivery in the *Letters* echoes the precepts of the rhetorical tradition, the stories of his experiences enable Pliny to advance upon the technical manuals in an instructive manner. For instance, we may remember that Regulus was criticised for having weak lungs. Conversely, Pliny's voice projection was a source of his success. He proudly recalls that, in the trial of Attia Viriola, he had to address a fully packed Centumviral court; this consisted not only of the 180 judges trying the case, but also the vast crowds which packed the surrounding benches and galleries (6.33.2–4). In the trial of Marius Priscus, the emperor Trajan even intervened for fear that Pliny might place undue stress on his strength and lungs (2.11.15)—needless to say, of course, Pliny finished his speech (!). The necessity of an orator having strong lungs was an essential and well-known condition for powerful delivery.[47] Yet Quintilian is

45 On Pliny's use of the noun *exemplar* for something that has the potential to become an *exemplum*, see his discussion of the potential exemplarity of Vergilius Romanus' comedy (6.21.3). The only other instance I have found of Pliny referring to himself as an *exemplum* is self-consciously put in the mouth of the (by now deceased) Emperor Nerva: "The Divine Nerva … sent me a most impressive letter in which he not only congratulated me but even our generation as a whole for being blessed with such an *exemplum* (that was his word), of the old-fashioned sort" (7.33.9).

46 For further discussion of the metaphor (*instare uestigiis*), see Gazich (2003) 132–133.

47 Cf. Cic. *Brut.* 317; Quint. *Inst.* 11.3.27. On the size of audiences and the difficulties of voice projection, see Aldrete (1999) 80–83.

curiously silent on how the orator might strengthen his body.[48] In the *Letters*, therefore, Pliny complements this advice rather than simply repeating it. In so doing he offers a manageable and memorable maxim for strengthening the health and thus ensuring success: *teque studiis uel otio trade*, as he put it to one young scholar. "Devote yourself to your studies as well as to leisure" (1.9.7).

The emphasis placed on *otium* by Pliny has long been identified as a defining feature of the *Letters*.[49] While it has become common to stress the connection Pliny makes between his leisure time and his literary pursuits, the letters to his protégés also provide a further context for understanding Pliny's references to *otium* more generally: its importance as an aspect of his oratorical activity. In 9.36.3–4, for example, Pliny delineates a precise routine which alternates physical and intellectual pursuits, in which he makes the connection between exercise and oratory explicit: "I have a short sleep, then a walk, I next read a Greek or Latin speech aloud and with emphasis not so much for the sake of my voice as for my digestion; although both are strengthened alike" (9.36.3–4). What this means is that the proper use of *otium* contributes as much to Pliny's vocal strength as to his overall good health.

Before we think that this report of Pliny's daily routine is accidental, we should note that it occurs in a letter to his pupil Salinator, one of the young men we earlier saw pleading successfully in court. Indeed, Pliny underscores the practical value of his advice just four letters later, in a subsequent letter to the same student. Delighted by Pliny's account of his summer activity, Salinator had apparently been keen to learn more about his mentor's routine in the winter months (9.40.1). In his reply, Pliny does not disappoint, but again gives an example of how one's *otium* could be spent productively. As it happens, the winter months provide the perfect opportunity for training the memory: "I repeatedly work over what I have dictated, and simultaneously fix it to memory by repeated revision" (9.40.2). To sum up Pliny's advice to his student, he spends his free time thinking about his work, dictating ideas, committing them to memory and declaiming aloud: that is, his leisure time—his *otium*—is devoted, in part, towards improving his *uox* and *memoria*.

Taking these autobiographical elements further, a third strategy Pliny employs to educate his reader is to reflect on his own successes and to draw

48 Quintilian simply warns that a man who is too busy with public duties cannot allot fixed times for exercise (Quint. *Inst.* 11.3.22).

49 Gibson and Morello (2013: 169) calculate that somewhere between 28% and 30% of the first nine books of Pliny's *Letters* are concerned with the 'fruits and pursuits of *otium*'.

attention to his own distinction and reputation as an orator. A particularly suggestive clue can be found in 5.20, which Pliny wrote to accompany the published text of his speech *For Varenus*: "When speeches are delivered, fortune is the controlling factor on either side: much is added or lost to the approval a speech wins by the speaker's memory (*memoria*), voice (*uox*), gestures (*gestus*), the actual occasion (*tempus ipsum*) and finally by either affection or loathing for the defendant (*uel amor uel odium rei*)" (5.20.3).

Once again we see that the list of circumstances which affect the success of a speech depend largely on its performative aspects: the written version can only convey the success of the speech's argument and use of language, whereas the live performance can be affected by the orator's *memoria*, *uox*, *gestus* and other external circumstances. In the passage immediately preceding this statement, Pliny invites his correspondent to judge whether his published speech is written well or badly. But the reader is left in no doubt about how Pliny's delivery of the speech was judged on the day: it was a success (*Egi pro Vareno non sine euentu*, 5.20.2).

Yet there are two new considerations in this letter, which enable us to build a more precise, and hence more valuable, picture of what Pliny regarded as important for effective oratorical performances. For in addition to the usual criteria of *memoria*, *uox*, *gestus*, we come to understand that what was important was how the orator adapted these skills to the *tempus ipsum* and how the audience responded to the orator's client: *uel amor uel odium rei*.[50] Nor was success dependent entirely on the orator's own persuasive abilities; he also needed to stage-manage the entire setting and guide his audience's reactions towards the defendant involved. Again, this advice draws on the long tradition, which preceded Pliny's own oratorical activity. Yet, in providing examples based on experience, the *Letters* have something else to offer by way of oratorical instruction: they take Pliny's students, and us, beyond rhetorical theory and offer a glimpse into his oratory in action.

50 Cf. Quintilian's revelation (*Inst.* 2.13.1–2) that the all-important gift for an orator is *consilium*—a capacity for judgement or invention (*OLD* s.v. 8)—since he is called upon to meet a variety of *ad hoc* emergencies. That Quintilian, and perhaps also by extension Pliny, is responding to a competing view on rhetorical education which subordinated it to practical experience is possible here: see Winterbottom (1964), developed by Holcomb (2001).

3 Pliny's Oratorical Performances in Tempore Ipso

It was a notoriously difficult task to recapture the spirit of an original performance in the published version of a speech.[51] As Pliny confesses at 2.19.1–4, discussed below, the polished text, even when recited to a group of friends, sorely misses the judges, crowds, emotions and energy of a 'live' trial. But these were precisely the kinds of detail that a letter *could* provide. Pliny states this aim explicitly at 6.33.7, when he tells another correspondent: "you can learn from the letter all the details which you could not gather from the speech". And then adds: "I thought you would be more willing to read the speech, if you could imagine yourself not so much reading it but being present at the trial". Pliny's descriptions of the trials were thus intended to enhance the imaginability of the oratorical occasion: the letters and the published speeches were meant to be read *together*. This dialogue between the speech and the letter hence provides a useful tool in helping us recover the performative aspects of Pliny's oratory.

As a starting point, we can make careful note of the comments Pliny makes about the dramatic atmosphere of the court and his role within it: *Letter* 2.19 provides some particularly telling evidence. Like Cicero before him (*De or.* 2.338), Pliny comments on the power of the crowd, and its ability to ignite the orator's performance (2.19.2). Counter to the common assertion that orators should largely stand still,[52] however, Pliny considered walking to and fro to be an effective means of audience engagement, at least in large gatherings (2.19.2–3). He comments on the use of the hands and eyes as particularly powerful communicative tools (2.19.4).[53] When added to the criteria for effective oratory established in the rest of the *Letters*, these features enable us to sum up the essence of Pliny's approach to public speaking: he was not a static performer.

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51 The published versions lacked the 'breath of life' according to Cicero (*carent libri spiritu illo, Orat.* 130); cf. *Brut.* 91–94. The famous orator Hortensius, too, allegedly spoke better than he wrote (Cic. *Orat* 132; cf. Quint. *Inst.* 11.3.8–9).

52 The author of the *Rhetorica ad Herennium* only advised a certain degree of walking during a speech's *refutatio* (*Rh. Her.* 3.27), while Cicero only approved of walking on rare occasions (*Orat.* 59). Quintilian agrees but notes that it can be useful at times, e.g. while waiting for applause to die down (*Inst.* 11.3.126). These comments seem to suggest that the orator should largely remain still when speaking; certainly it was considered foolish to run about too much (*Inst.* 11.3.126).

53 Compare the detailed guidelines for the eyes and hands provided by Quintilian respectively at *Inst.* 11.3.75–79 and 11.3.85–121.

More productively, however, we can analyse how the descriptions of the trials in Pliny's *Letters* correspond to common performative *topoi*, as well as how these might relate to the oratorical situation. Take Pliny's letter to Voconius Rufus as an example, the cover letter he sent to accompany his speech *For Attia Viriola* (6.33). Embedded within the description of the trial, there are several clues to aid the recovery of Pliny's performance. He begins (6.33.2):

> This is my speech *For Attia Viriola*, famed for the high renown of the person involved and the rarity of the example it sets, as well as the size of the court. For here was a woman of high birth, the wife of a praetorian husband, disinherited by her eighty-year old father who was love-struck after just ten days and had brought a stepmother into his house, now suing for her patrimony in the four tribunals [of the centumviral court].

As we have seen, the reaction of the jury towards the client—*uel amor uel odium rei*—was one of the factors the orator needed to control or orchestrate carefully. In this connection, the emphasis on Attia's birth and marriage, the prominence attached to her gender and the stereotypical resort to the cruel stepmother are all significant, for they each set up what promises to be a fascinating and dramatic narrative of the sufferings of Pliny's client: a well-born, well-married woman forced to sue for her rightful inheritance. But the description does not just provide background details of interest to Pliny's reader; it also points towards his use of a performative *topos*. For the downfall of a formerly prosperous person was one of the strategies Cicero had earlier recommended for eliciting the pity of the jury (*Part. Orat.* 57). By turning the spotlight upon his client, the alleged victim of this inheritance dispute, Pliny secured the audience's sympathy for Attia while directing their anger and hatred against the stepmother. That an emotional effect was the desired outcome is confirmed just a few lines later when Pliny adds the critical detail: "We gave sails to indignation, to anger, and to grief" (6.33.10).

We can see Pliny doing something similar in his defence of Julius Bassus, which he describes in 4.9. In this case the appeal to sympathy was a necessary part of the argumentative strategy, for the principal charge was extortion, and Pliny had to counter the fact that Bassus had illegally accepted gifts from the provincials. The evidence was incontrovertible; neither could Pliny deny that Bassus' actions were prohibited by the law. Instead, he tells us, he opted for a 'middle course', presumably arguing that the gifts were accepted unwittingly. Since the penalties facing Bassus included the loss of his senatorial status, the defendant had instructed Pliny to speak positively about his qualities, his

distinguished ancestry and the hazardous toils he had suffered (4.9.5). It is only later in the letter, however, and in a different context, that Pliny gives away a vital clue for reconstructing the scene. Having been found guilty on the charge of accepting gifts, Bassus' senatorial status was nevertheless protected and upheld; thus the result was a semi-victory and Pliny's strategy had worked. When the senate was dismissed, Bassus was welcomed by the people with rapturous applause (4.9.22):

> The renewal of the old story about his hazardous career had made him popular, as did his name, widely known for the perils he had faced; moreover, upon his lofty frame he carried the pitiful and squalid conditions of his old age (*maesta et squalida senectus*).

The clue here is in the last detail: *maesta et squalida senectus*. For a famous and time-honoured means of securing the audience's sympathy was to produce the defendant and/or his family in dishevelled guise.[54] Pliny's speech detailing the highs and lows of Bassus' life, coupled with his exploitation of the old man's decrepit appearance, had secured his victory by means of an emotional performance.

An emotional appeal, however, had to be sustained with the appropriate voice and gestures. If we pick up the case of Attia Viriola where we left off, above, we shall see that what happens next is also interesting for building a possible reconstruction of Pliny's performative techniques. For the focalisation switches from the perspective of the audience to the view of the scene from Pliny's eyes (6.33.3–5):

> One hundred and eighty judges were sitting (for that is how many are gathered in the four *consilia*), there was a full representation for each side as well as several benches for supporters, besides there was a densely packed crowd of bystanders spreading many rings deep up to the furthest edges of the court. The tribunal was also crowded, and women and men were even hanging over the upper story of the basilica in their eagerness to hear (which was difficult) and to see (which was easy). A great expectation (*magna exspectatio*) filled the fathers, daughters and the stepmothers alike.

54 On this technique, see Quint. *Inst.* 6.1.30. For further discussion and illustrative examples of this and associated ploys, see e.g. Dyck (2001) 120–121, Winterbottom (2004) 219–223 and Hall (2010) 227–229.

As he stands in court waiting for the case to begin, we can feel Pliny's anxiety mounting as he views the spectators at the trial and senses their *magna exspectatio* at the awaited verdict. The suspense of the outcome was one of the aspects of performance Pliny had identified as difficult to recapture in a written speech (*exspectatio euentus*, 2.19.2). But, it was, in fact a frequent *topos* in *exordia*. For common to all speakers was the basic need to secure the goodwill of the hearer, and the *exordium* was the prime place either to present the orator's admirable qualities or stress the disadvantages of his situation as a claim to sympathy.

Cicero had earlier alluded to this feature of a speechin the *Diuinatio in Q. Caecilium*, the speech in which he had to compete against Quintus Caecilius Niger for the right to prosecute Gaius Verres. As part of his master-lesson to his younger rival, Cicero condescendingly instructs Caecilius in how to harness the atmosphere of the court (Cic. *Div. Caec.* 42).[55] First he pictures the great keenness, the great suspense (*quanta exspectatio*), and the great crowd of hearers all present on the day. Then he pictures how much attention the shamelessness of his opponent will direct towards his speech. Cicero's main point is that a ready-made *exordium* would not work in this atmosphere. Instead, the speaker should react accordingly, true to his feelings. Cicero even gives a clear hint that a proclamation of anxiety would be the logical starting place: even as he starts to think about the day of the trial, Cicero admits that he is already afraid (*iam nunc timeo*).

In imagining the opening of the trial against Verres, Cicero uses exactly the same *topos* to which Pliny alludes in his letter: the *topos* of expectation.[56] But I do not mean to insinuate here that Pliny is imitating Cicero; more simply I would like to suggest how we might read aspects of performance into the descriptions of his speeches provided by the *Letters*. For Pliny's comments on his anxiety in the trial of Attia Viriola suggest the performative *topos* by which a speaker could make a powerful demand for a sympathetic hearing. It is tempting to imagine that the word *exspectatio* appeared in the Latin text of Pliny's published speech, and that Pliny is here describing the precise numbers of people and the atmosphere of the court to enable his reader to feel "as if he were present"—to use Pliny's own words (6.33.7, cited above). If we

55 For further discussion of this passage, see Tempest (2013) 49.

56 In the actual trial against Verres, Cicero claims that, although the great expectation and the size of the crowd still trouble him, his anxieties have been surpassed by the fear he feels at Verres' nefarious attacks against him (Cic. *Verr.* 1.4). Another, similar use of the topos of expectation, however, can be found at Cic. *Rosc. Am.* 11; that the topos was particularly suited to the *exordium* may also be inferred from Cic. *Rosc. Com.* 27.

wished to picture Pliny delivering this appeal, as a student of oratory would have been encouraged to do,[57] we could further supplement his description with information he has already provided on effective delivery: that the body should move in harmony with the thought, and that the hands and eyes should follow (2.19.2–4). Pliny's eyes and hands would have presumably followed his words as he took in the panoramic view of the spectators before him, sweeping past the fathers, daughters and the stepmothers in turn. When we consider that there may have been over 2000 people squeezed into the *Basilica Iulia* to observe the trial, Pliny's description becomes at once dramatic, even electrifying.[58]

Another illustration of the use of this *topos* in Pliny can be found in his summary of the prosecution of Marius Priscus, who was also being tried for extortion. The passage in which Pliny describes the occasion of his speech is worth quoting at length because, again, it gives us a valuable glimpse into the environment in which Pliny spoke (2.11.10–14):

> The emperor was presiding (for he was consul), and this was the month of January when there are many people, especially senators, present in large numbers; besides the gravity of the case, the suspense (*exspectatio*) and the gossip increased by the adjournment, the insatiable and natural thirst for hearing anything new or important, had excited the whole population from all parts. Imagine my anxiety, my fear, at having to speak on such a matter in that crowd and in the presence of the emperor. To be sure, I have often pleaded in the senate, and nowhere do I usually gain a kinder reception: but this time all the novelties of the case filled me with an unfamiliar fear. For, on top of the problems I have just described, I was confronted by the particular difficulty of the case: standing in front of me was a man who had recently been of consular rank and a member of the *septemuiri* in charge of the banquets, but who was now neither. And so, since he had been condemned already, it was particularly difficult to make him the subject of a prosecution speech, even though the atrocity

57 That published speeches were meant to be imagined and performed by students is apparent from the abundance of advice provided by Quintilian on this topic: e.g. how to deliver the opening lines of Cicero's *Pro Milone* (*Inst.* 11.3.47–51), or the tones appropriate for the second *Philippic*, which was never even delivered (*Inst.* 11.3.167). He also issues warnings on how not to imagine or mimic actions in performance, citing examples from *In Verrem* II (*Inst.* 11.3.90).

58 The reconstructions of the space of the court by Bablitz (2007, 70) lead her to calculate that Pliny may have addressed 'as many as 2,150 people' on this occasion.

> of the crime weighed against him, because he was protected by the pity (*miseratio*) felt for a condemnation already decided.

In sum, the importance of the case, the anticipation and gossip accompanying it, and the inherent interest of the population had all combined to produce what Pliny describes as a "most majestic sight" (2.11.10). But he also builds the themes of expectation and the magnitude of the trial to their natural conclusion: the anxiety of the speaker. As Pliny confesses, the whole scene made him unusually nervous: "Picture my anxiety, my fear", he tells his correspondent (*Imaginare quae sollicitudo nobis, qui metus*).

A particular problem arose in that Pliny had also to counter the *miseratio* naturally felt for a defendant who had already been stripped of his status, as Marius Priscus had been.[59] We can confidently assume that Pliny needed to divert the audience's sympathy away from Priscus, not least because Catius Fronto was speaking for the defence: "a man with the greatest expertise at extracting tears" (2.11.3). In this instance, the *topos* of expectation and Pliny's projection of anxiety would have made a powerful counter demand for the audience's compassion. But a further tip for the budding orator can be unearthed in the conclusion to this episode, for Pliny also recalls how he redirected his nervous energy into the performance: "the approval of my hearers counterbalanced my anxiety", he tells us: "I spoke for almost five hours" (2.11.15). The lesson here is one familiar to performers of all generations and kinds: work with your nerves, not against them.

The additional reminder here of the potential length of a trial and the stamina required is not a unique occurrence in the *Letters*. If Pliny's speech against Marius Priscus lasted five hours, on another occasion he spoke in the Centumviral court for seven hours (4.16.7). We do not know the precise duration of his speech *For Attia Viriola*, but Pliny appears almost apologetic for the length of the published version (6.33.7–10):

> Although it is long, I am not without hope that it will be as popular as a very short one. For it is kept fresh by its rich material, clear divisions, the plethora of anecdotes and by the variety of oratorical style. Many of the passages (I would not dare say this to anyone but you) are in the grand style, many are aggressive, and many in a subtle style. For often

59 As Pliny explains at 2.11.2, Priscus had already pleaded guilty of the charge *de repetundis*. He had then applied for a commission to assess how much compensation he needed to pay. It was at this point that Pliny and Tacitus had been instructed to act for the provincials.

> it was necessary to interrupt my impassioned and lofty arguments with calculations, even to the point that I almost had to demand counters and board, so that all of a sudden my Centumviral case became more like a private hearing.

The digression on the speech's length enables Pliny to impart some further rhetorical advice. Keen to avoid his reader's—as well as his original audience's—tedium, he personally sought to keep his material alive by varying his style. Again, Pliny's comments on the need for rhetorical versatility do not stand alone in the collection of his works. In commenting upon the text of his *Panegyricus*, for example, he warns his reader that: "one should not always be searching for the elevated or sublime" (3.13.3–5). In composing his speech in vindication of Helvidius Priscus, Pliny tells us explicitly that he modelled his own work on Demosthenes' attack *Against Meidias* (7.30.5). This admission provides a useful indication of the range of styles and tone Pliny sought to achieve in his oratory. But it also reveals the kind of material and anecdotes he might have included. In particular, the brutality and arrogance of the villain Certus, who had made an attack (*manus intulisset*, 9.13.2) upon a fellow senator, presumably helped Pliny create a powerful character sketch of his opponent.[60]

However, it is only on the rare occasion that Pliny quotes his own words that we can obtain a truer image of his oratory in action. This happens in 7.33, a letter Pliny sent to Tacitus recording an oratorical performance he wanted the historian to immortalise in his writings: his defiant bravery against Baebius Massa, the corrupt ex-governor of Spain, whom Pliny and Herennius Senecio had successfully prosecuted in 93 B.C. For, in the unfolding saga, Senecio appears to have behaved in such a way that Massa charged him with misconduct in return: Senecio, he argued, had exceeded his duty as an advocate for the Baeticans (7.33.7). It was at this point that Pliny interjected to support his colleague and delivered the words by which he wanted to be remembered: "I am afraid, most noble consuls, that Massa may have exposed me to the charge of collusion by his silence, because he has not indicted me as well" (*Vereor … clarissimi consules, ne mihi Massa silentio suo praeuaricationem obiecerit, quod non et me reum postulauit*, 7.33.8).

60 For more details of the background to the speech and the context in which he spoke, see 9.13, in which Pliny reports the full event to his student Ummidius Quadratus. Pliny's use of Demosthenes' speech *Against Meidias* is not without precedent. Indeed, Cicero drew large amounts of inspiration from it, especially in his character portrayal of Gaius Verres: see Pearson (1968); Weische (1972) 33–35; Tempest (2007).

But why did Pliny want these words recorded in particular? We may presume, as he goes on to infer, that they provided a moral *exemplum* (7.33.9), because Pliny had made a courageous offer to share the charge brought against Senecio. As Leach has pointed out, Pliny may have sought to whitewash his career under Domitian by aligning himself firmly with one of the Emperor's most notable victims.[61] However, we should not overlook Pliny's passing comment that his "speech was acclaimed at once" (*vox statim excepta*, 7.33.8). For his brief oratorical intervention could only have worked if his audience believed in the power of Pliny's performance. This would have been achieved by the shifts through the emotions and the participants in this particular drama—his own fear (*uereor*), the reverence due to the consuls (*clarissimi consules*), his opponent's reproach (*obiecerit*), returning to and culminating in Pliny's determined stand not to be excluded from Massa's attack (*quod non et me reum postulauit*). This kind of unscripted and spontaneous speech provides evidence of Pliny reacting to the performative situation *in tempore ipso*. Having determined an appropriate opportunity to interject and assert his moral *ēthos*, Pliny scored an important victory for his team: Massa's subterfuge was foiled.

A similar effect could be achieved by humour, especially if it caught an opponent by surprise.[62] Pliny provides an example in 7.6: his defence of some unnamed freedmen who were being indicted for forgery of a will and poisoning by a mother who had lost her son. Prior to the incident Pliny relates, there had been a hearing before the emperor, which put an end to the case before it came to a full trial. With a lack of evidence to substantiate the charges of the mother, the verdict had been given in favour of the defendants for whom Pliny was appearing. In a twist to the case, however, the mother later approached the emperor claiming to have unearthed fresh evidence. Attius Suburanus was appointed as judge and again Pliny appeared on behalf of the freedmen. The opposing advocate Julius Africanus purportedly made a long speech and had even used up his allotted time. This is the point at which we pick up in Pliny's letter, where he relives the amusing finale to this bizarre tale in direct speech (7.6.11–13):

> 'Please, Suburanus', asked Africanus, 'let me add one last word.' At that moment everyone turned to face me, expecting me to reply at length, but

61 Leach (1990) 18–19.

62 Cicero himself included an excursus on humour and jokes in oratory at *De or.* 2.216–290; Quintilian likewise devoted a section to wit (*Inst.* 6.3). The fullest study remains Corbeill (1996); an overview of other scholarship can be found in Rabbie (2010).

> instead I said, 'I would have responded, had Africanus added his one last word. For I am sure *that* would have contained all the fresh evidence.' I can scarcely recall ever winning as much applause for speaking, as I did on that occasion by not speaking.

Finally, Pliny provides a healthy reminder that the attention of the audience might be engaged by props, too, which could help explain the evidence. In the trial of Attia Viriola, he was tempted to ask for a board and counters to demonstrate the complex calculations involved. This, he explains, would have been more appropriate for a private hearing and not the large crowds and jury of the Centumviral court. But, other stage-managed effects would have included the presentation of witnesses and documents. In 3.9, for example, Pliny recalls how he prosecuted Classicus and his accomplices on the charge of extortion in the province of Baetica. It was easy to prove the charge against (the now deceased) Classicus, Pliny tells us, because Classicus' secret correspondence had preserved telling evidence against him (3.9.12–13):

> He had left an account written in his own hand of what he had received from each transaction and from each court case; he had even sent arrogant and boastful letters to some girlfriend at Rome, using these very words: 'Ho, ho, I'm on my way to you, a free man; I've sold up a piece of Baetica and made four million.'

We can only imagine the use Pliny must have made of this letter in the senate and the laughter generated by Classicus' stupidity. It formed an impressive opening to the case and, even though the charges against Classicus' accomplices were harder to prove, Pliny's case was so carefully prepared that the opposing advocate, Claudius Restitutus—"a practised and vigilant speaker, ready for anything unexpected" (*uir exercitatus et uigilans et quamlibet subitis paratus*) was henceforth "accustomed to saying that he had never before felt so befuddled and confused" (*Solet dicere … numquam sibi tantum caliginis tantum perturbationis offusum*, 3.9.16). Echoes of Ciceronian imagery in boastfully describing the effect of his own oratory should perhaps not be overlooked here.[63] For this is the pre-eminent claim that Pliny can make for his oratorical

63 It is hard not to think of Cicero's alleged boast that "he had shrouded the jury in darkness during the trial of Cluentius" (*se tenebras offudisse iudicibus in causa Cluenti gloriatus est*, Quint. *Inst.* 17.20–21); other pertinent examples of darkness (*tenebrae, caligo*) and confusion (*perturbatio*) used in this context occur at: Cic. *Div. Caec.* 45; *Agr.* 1.24.

performance: by his resources of spontaneity, wit and by engaging the audience in the presentation of evidence, at the close of his speech, he had left his opponent speechless.

4 Conclusion

In writing his letters, Pliny gives a practitioner's view on the skills, talents and demands of oratory. And it is significant that, in this connection, the vast majority of his comments pertain to the importance of delivery. Pliny was not trying to write a handbook on rhetoric, nor was he seeking to define the art of oratory from any other standpoint. But the letter format provided Pliny with the means to initiate a discourse on oratory nonetheless, and in polishing these letters for publication he was able to disseminate his views to a wider audience than the original composition. Cicero had written a history of Roman oratory, the *Brutus*, which culminated in his own times, and in publishing his speeches he inserted himself into the canon of Roman orators. Quintilian had written a rhetorical *uade mecum* to instruct both teachers and budding students in the art of their predecessors. Pliny, for his part, extended that corpus down to his own times, when much of the old oratorical genius had continued but also changed to acclimatise to the period of the emperors. New opportunities for speaking arose; speeches delivered in the law courts and senate still had the power to make (or break) a career; friendships and enmities continued to be formed or fought on the oratorical battlefield. The legacy of Pliny's letters is such that we can understand just how masterfully he deployed the power of oratory to rise to great prominence in the Imperial period, as well as understand how this power enabled him to operate under the new political circumstances.

It is unsurprising, then, that Pliny attracted the attention of many a young man who wished to study his oratory. Throughout the *Letters* we are presented with an array of students who flock to hear Pliny speak (4.16.2), who recognise his name from their rhetorical studies (9.23.2), or who study his speeches with a view to perfecting their own knowledge (8.13.1–2). For his part, or so I have argued, Pliny used the *Letters* to establish himself as the positive *exemplum* of his day. Using catchwords from the rhetorical tradition, Pliny artfully managed to hammer home the fundamental precepts for successful oratory, nearly all of which were connected to the performance of the speech: powerful lungs, a tenacious memory, appropriate voice and gestures and the ability to act extemporaneously and harness the atmosphere of the court.

But the letters do more than simply list what Pliny considered important for oratorical delivery. By describing the various speeches he gave, as well as the

circumstances in which they were delivered, the *Letters* show us the way Pliny engaged his audience through performative *topoi* and techniques. Returning to the problem highlighted at the beginning of this chapter, it is unfortunate that we do not have the kind of access to Pliny's oratory which only the published speeches could provide. Nevertheless, Pliny has left us valuable evidence for imagining how he put his talents to use on the oratorical stage. A close reading of his letters thus enables us to place his comments back into their original, performative context: the speeches of Pliny.

PART 4

Emotions in the Law-Court

CHAPTER 12

The Mind's Theatre: Envy, Hybris and Enargeia in Demosthenes' *Against Meidias*

*Dimos Spatharas**

Introduction

In recent years, scholars have done much to elucidate the ways in which speakers manipulated envy in the public communication of classical Athens.[1] Relevant discussions, especially Cairns (2003), Fisher (2003), Konstan (2006), Sanders (2014) and Spatharas (2014) emphasise the ideological uses of the emotion rather than address the empirical and, hence, insoluble question of whether the masses of citizens fostered sentiments of envy towards the elites of wealth. At the same time, in an important cultural study, Cairns has shown that envy (along with erotic love) is an emotion which ancient thinking associates with *vision*, a sense that ancient folk psychology and science construes as particularly haptic.[2]

The present contribution rests on a notion which is well-established in ancient rhetorical theory as early as Gorgias, namely that, by virtue of its representational qualities, speech induces mental images and, thereby, arouses emotions. In Gorgias' eyes (cp. *Helen* 9–14 on *logos* and 15–19 on vision), visual *logos* causes emotional reactions whose impact on human behaviour is commensurate with the impact of sentiments caused by the products of visual arts—especially statues and paintings. Notably, Gorgias' discussion seems to construe the emotive responses elicited by poetry and visual arts as comparable to the sentiments generated by the sights that we perceive in real life situations (*Helen* 16–17). Furthermore, in his *Poetics* (1453b 1–12) Aristotle famously postulates that the tragic emotions of fear and pity can be elicited by *opsis*, but they should properly be aroused by the narrative itself. Aristotle thus seems to indi-

* I wish to extend my warmest thanks to Brenda Griffith-Williams for reading my paper and improving the style and argument. I would also like to thank the editors of this volume for offering useful suggestions. Naturally, I am the only responsible for the remaining mistakes.

1 See especially Cairns (2003); Fisher (2003); Saïd (2003); Sanders (2014); Spatharas (2011) and (2014).

2 See Cairns (2011).

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cate that through the activation of audiences' imagination, verbal narratives yield mental images and thereby cause the emotions, which are characteristic of tragic poetry.[3] Even a cursory reading of Greek tragedy shows that the most unsettling events, events which would provide modern Hollywood producers the opportunity for fast-paced action movies, are described in messengers' speeches.[4]

As I propose to show in the pages that follow, visual narratives rather than just the 'dramatic' aspects of forensic oratory to which modern scholarship usually turns its attention are extremely important for what ancient rhetoricians describe as *pathopoiia*. A full understanding of these 'dramatic' aspects of forensic speeches requires discussion of the visual qualities of forensic storytelling rather than just intertextual approaches emphasising the interfaces between oratory and tragedy or approaches that focus solely on the performative features that oratory shares with drama.[5] My cognitive approach emphasises that the *visual* qualities of forensic narratives enhance significantly the "emotion scripts"[6] that speakers construct as a way of directing judges' attention to their opponents' transgression of social norms. These scripts, I argue, are so constructed as to induce judges to use their social knowledge and, thereby, urge them to supply the normative meaning of speakers' stories.

Because of the limitations of the present contribution, I turn my attention to two significant passages from Demosthenes' *Against Meidias* (72–73 and especially 158–159) which I use as test cases. This chapter, thus, finds its focus in Demosthenes' use of visual storytellingas a means of determining the hybristic aspects of Meidias' conduct and delineating the misuse of his wealth, thereby appealing to jurors' legitimate envy.[7] *Enargeia* ("vividness"), I suggest, is an

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3 See Blundell et al. (2013) 13–14. Systematic approaches to "mental images" involve the notion of *phantasia*, which is foreshadowed in Gorgias' understanding of *both* speech and sights as material "engraved" or "stamped" on our minds. See Webb (2009b), ch. 5. Blundell et al. (2013) discuss modern scientific evidence indicating that our responses to verbal and visual narratives are different in degree but not in kind from our responses prompted in our real life interactions. This evidence casts doubt on the descriptive accuracy of the term "aesthetic" emotions.

4 See Zanker (1981); Fantuzzi and Hunter (2004) 443 rightly point out that Longinus' examples of *enargeia* in poetry derive mainly from messengers' speeches.

5 See for example, Bers (1994); Hall (1995); Fantham (2002). As the editors of this volume point out in the Introduction (p. 3), "performance encompasses the possibility of more subtle communication between the speaker and the audience than mere delivery".

6 On emotion scripts see Cairns (2008).

7 The question of whether the speech was actually delivered in an Athenian court remains open. On this point see MacDowell (1990) 23–28.

indispensable tool that helps Demosthenes exploit the ocular qualities of envy with the purpose of isolating his opponent from the body of citizens. Hence, my discussion focuses on a significant passage where Demosthenes employs "vividness" in order to describe Meidias' wealth in detail. Taking as my starting point that legitimate envy is a democratic sentiment that requires normative judgments about the legitimacy of citizen's prosperity, I propose to argue that Demosthenes' vivid description of Meidias' wealth incorporates potent ideological and cultural considerations. This description, I suggest, does not target Meidias because of his wealth *per se*. Rather, Demosthenes employs *enargeia* to attack Meidias' contempt for the *dēmos* and his unwillingness to spend money for the city. For this reason, his narrative predictably revolves around and, at the same time, exploits the dichotomy between private wealth and public interest. Meidias' isolation from the body of citizens is enhanced by Demosthenes' description of his opponent's theatrical displays of luxury. As we shall see, loudmouthed Meidias treats his wealth as an intimidating spectacle. His performances of ostentation in the *agora* turn middling Athenians into silent spectators of his antidemocratic *ēthos*.

1 Envy, Visuality and Social Cognitions

The notion that the eyes play a predominant role in Greek folk assumptions concerning the generation of envy is abundantly attested in our sources.[8] But the strong relationship between sight and the cognitions that give rise to envy is not an exclusively Greek phenomenon. In his article on the pre-emptive strategies that people employ cross-culturally to defend themselves against possible enviers, Foster emphasises the importance of *concealment* (1972).[9] Foster's approach does not take into account recent advances in the study of emotions, which emphasise that affects are cognitive phenomena requiring evaluative beliefs. But his conclusion that, where applicable, 'concealment' is the most practicable way of forestalling the envy of others is in pace with the emotion's cognitive structure. The invisibility of enviable possessions makes comparison impossible. Conversely, open displays of covetable possessions not only encourage comparison, but also attract enviers' possibly harmful eyes.

Because envy requires comparison, the easiest, even if not always applicable, way of avoiding others' loathing is to hide possessions, goods or achievements

8 For a discussion of envy (and erotic love) as particularly ocular emotions see Cairns (2011).

9 See also Elster (1999) 178–179.

that may indicate the target's relative superiority.[10] The following example from Foster's study is particularly instructive: when an Egyptian man bought a new car and predicted that his purchase might arouse his neighbours' loathing, he placed at a visible part of his new vehicle a pair of worn out shoes. In this example, the owner of the new car is unable to conceal his brand new and thus enviable possession and therefore seeks to mitigate onlookers' responses by offering a visible sign of his previous unfortunate condition. His gesture, thus, invites possible enviers to evaluate his present condition by taking into account his previous state of poverty to which he appeals as a way of indicating that he *deserves* his new belonging. Desert—a notion central to the appraisals involved in emotions focusing on the fortunes of others, especially pity and envy—is particularly relevant to our discussion.[11]

In his definition of envy, Aristotle stresses that desert is not a constituent element of the appraisals that give rise to the emotion. According to Aristotle, the emotion that we experience when our target prospers without deserving his prosperity (ἀναξίως) is "indignation" (τὸ νεμεσᾶν, cp. for example 1386b 16–20). In contrast, envy is directed *indiscriminately* against people whose prosperity is within our reach. As I argued elsewhere (Spatharas 2014), Aristotle's use of an obsolete word to describe a legitimate sentiment, which our sources sometimes designate with the word φθόνος, can be explained on the basis of the emotion's uses in the democratic discourse of classical Athens.[12] Unlike Aristotle (*Rh.* 1388a 36), who treats envy as a "base" (φαῦλον) sentiment, some forensic passages invite audiences to give vent to their envy towards self-interested members of the elite (see below, section 4). This democratic use of what Rawls describes as "benign envy" can best be explained as a reversal of earlier, "aristocratic" uses of the emotion.[13] In these uses, envy was a means of stigma-

10 Cf., for example, Aristotle's definition of the emotion in *Rh.* 1386b 18–20. In Aristotle's eyes, envy requires that the agent is somehow 'similar' to the target. Great distance between the agent and the target makes comparison impossible, and, therefore, neutralises sentiments of envy. This is particularly significant for my discussion of the emotion in the egalitarian milieu of classical Athens, where political equality, the cornerstone of democratic ideology, coexisted with social inequalities (on this issue see Cairns (2003)). Political equality rests on the notion of citizens' "similarity" (note that according to the myth of *autochthony*, all Athenians are the offspring of Attica and therefore equals like brothers). On equality and similarity see Cartledge 1996; on *autochthony* see Loraux (1986) 148–150; Rosivach (1987).

11 For the notion of desert, translating Aristotle's ἀξίως, see Cairns (2003) and Sanders (2014) 23.

12 See Spatharas (2014), relying on and extending Konstan's discussion (2006).

13 See Konstan (2006). On "aristocratic" uses of envy as a means of keeping egalitarian claims at bay, see Cairns (2003).

tising the masses' egalitarian pressures. In what follows, I argue that Demosthenes' vivid forensic description of the wealth possessed by his opponent, a self-interested member of the Athenian elite, is so designed as to produce a conceptual frame that enables him to appeal to jurors' legitimate envy, i.e. the emotion that Aristotle labels as "indignation". But before I proceed to discuss Demosthenes' rhetorical manipulation of his opponent's hybris and luxuriousness, it is necessary to outline briefly some pivotal points concerning the notion of *enargeia* and its emotive potentialities.

2 Emotions and Enargeia

As is well-known, our most important sources about the poetics of *enargeia* derive from treatises composed much later than the speeches of the orators. Yet, the authors of the *progymnasmata* do not develop a systematic rhetorical meta-language that would enable us to understand how they construed this important concept. The most extensive and, indeed, extremely complicated discussion of the topic is included in Quintilian's *Institutio Oratoria*. In her recent study on *ekphrasis*, Webb has done much to elucidate ancient rhetoricians' understanding of *enargeia*.[14] At the same time, Eden has pointed out that theories of *enargeia* developed in classical Greece for cases where "the narrator set out to reproduce the vividness of ocular proof through language".[15] In view of the emphasis that rhetoricians, as early as Gorgias, place on the problems arising from the absence of factual evidence, Eden's remark gains significant plausibility.[16]

According to Webb, one of the most salient features of ancient discussions of *enargeia* is that they emphasise vivid narrations' ability to affect listeners' emotions.[17] Vivid storytelling not only makes listeners feel that they are present at the narrated events, but also urges them to respond affectively to them. Hence, *enargeia* operates as a mechanism of emotional involvement through which speakers lead listeners to experience the emotions that *they* experienced when they composed their narratives. But, as Webb emphasises, ancient theories of *enargeia* take audiences' emotional responses to narratives to be predictably

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14 See Webb (2009b), esp. chs. 4–5; for a recent discussion of *enargeia* in Demosthenes, see Serafim (2015) 96–108.

15 See Eden (1986) 71–72.

16 On this topic, see Spatharas (2008). On *enargeia* and eyewitness knowledge, see Blundell et al. (2013) 11–12. See also Halliwell (2011) 85–86.

17 See Webb (1997) and (2009b) *passim*.

unequivocal (2009b, 109). In other words, when composing a vivid description of an event, the orator takes it for granted that there will be no room for individual, subjective emotional responses to his storytelling. As Webb says, the predictable conformity of responses, a requirement for effective uses of *enargeia*, is due to the fact that "[t]he production of *enargeia* involved a competence which was more than simply lexical; rather it was a cultural competence, a familiarity with the key values of a culture and the images attached to them" (2009b, 124–125).

The notion that potent cultural, normative and ideological understandings are a requirement for the verisimilitude of vivid stories, a medium through which listeners' sentiments are objectified, is particularly relevant to my argument. Given that forensic speakers attempted to achieve persuasion, it is hardly surprising that their narratives reflect "mainstream" rather than peripheral or marginal ideological assumptions, social norms or values. In so far as forensic speakers seek to elicit *specific* emotions and direct them against their targets, it is also predictable that the cognitive framing of their descriptions is shaped not only by easily recognisable, but also by widely accepted normative considerations, assumptions, or stereotypes. It is for this reason that forensic narrativescan serve as a heuristic tool that helps us investigate, with better hopes of accuracy, the web of values favoured by the democratic ideology of classical Athens. To put it differently, rhetorical *topoi* recur in the speeches, because jurors' horizon of expectations is recognisable.

That *enargeia* is a particularly appropriate tool in cases where speakers intend to cause their audiences' legitimate envy is easily understood if we take into account that, as I suggested earlier, envy is a particularly ocular emotion. The fact that concealment is the main pre-emptive strategy employed by the emotion's possible targets indicates why vivid descriptions fully exploit the emotion's cognitive structure, thereby focusing primarily on the visibility of the target's possessions.[18] Furthermore, as we shall see, these descriptions are incorporated in contexts that highlight the ways in which wealthy individuals' private lives and life-styles impinge on pivotal social norms. Hence, these descriptions are another instance of the "wide angle" of social considerations that ancient courts took into account in their decision-making.[19] In many cases,

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18 Ancient folk assumptions and their scientific appropriations sometimes take the eye to be the source of emotional affliction. For a discussion of the evil eye in Plutarch and Heliodorus see Dickie (1991); on the interfaces between folk assumptions and scientific theories concerning the emotive power of vision see Cairns (2011).

19 I borrow the term "wide angle" from Sheppele (1989). On the use of 'extra-statutory' norms by Athenian litigants see Lanni (2009).

this wide-angle involves evaluations concerning the ways in which members of the Athenian elite use their wealth to serve the polis' public interest.

As I argue, Demosthenes' vivid description of his wealthy opponent's possessions and ostentatious lifestyle indicates that in the public discourse of classical Athens legitimate envy, what Aristotle defines as *to nemesan*, was directed against self-interested members of the elite who refused to spend money for the city. Furthermore, my discussion indicates that, as Cairns (2003), Fisher (2003) and Konstan (2006, 126) have shown, the notion of the masses' *dispositional* envy originated as an ideological construction through which the elites attempted to stigmatise egalitarian demands. This is clearly depicted in Alcibiades' speech in Thucydides (6.16). On the basis of his essentialist reading of the masses' dispositional envy (cf. φθονεῖται φύσει), Alcibiades, or rather Thucydides' Alcibiades, not only advertises the legitimacy of his superiority, but also seeks to establish that social inferiors' claims to equality are the product of a base sentiment.[20] Unlike Aristotle,[21] who also attributes sentiments of envy to the masses, but recognises the tensions caused by social inequalities, Alcibiades' argument construes the social order as a static entity rather than as a dynamic phenomenon produced by real or perceived inequalities generating conflicts. Hence, when modern scholars take the masses' envy for granted,[22] they become entangled in an essentialist and, thus, biased ideological construction that served ancient (and modern) propagandistic uses.[23] The fundamental assumption of this essentialist ideological construction is that envy is a dispositional characteristic of the masses. Furthermore, since envy requires comparison, the attribution of envy to others is an enhanced, albeit extremely aggressive, way of indicating one's own superiority. It is no coincidence, for example, that the emotion is so prominent in Pindar's praise poetry.[24] At the same time, by accepting that the masses fostered sentiments of envy towards the elites, we give a positive answer to an empirical and thus unanswerable question. As I argued elsewhere (Spatharas 2014), we are better guided if we

20 The use of φύσει here indicates one's "nature"; Ostwald (1986) 260–266. On Thucydides' Alcibiades, exhibiting similarities with epinician poetry, see Gribble (1999) 64. Notably, at 143–150, Demosthenes compares Meidias with Alcibiades. On this comparison see MacDowell (1990) notes ad loc.

21 See, for example, *Politics* (1301b2–14; 1302b1–14; 1305a 33–38).

22 For an overview and robust criticism of modern approaches see Cairns (2003); see also Spatharas (2014).

23 On the "politics of envy" and Margaret Thatcher see Cairns (2003), Spatharas (2014).

24 See Kurke (1991) ch. 8 (with Fisher's criticism, 2003); Cairns (2003). On Isocrates' uses of envy in the highly self-adulatory *Antidosis*, see Saïd (2003); Spatharas (2011).

turn our attention to the uses of envy in specific arguments in the context of the polis' public communication. Indeed, the very fact that in some instances orators employ *enargeia* to elicit their listeners' legitimate envy contradicts the assumption that envy was a dispositional feature of the Athenian masses.

3 Enargeia, Hybris and the Limitations of Visual Speech

In what follows, I discuss Demosthenes' *Against Meidias*, a speech that brings to the fore with extreme lucidity the ideological concerns surrounding prominent and wealthy Athenian citizens' private lives.[25] In this speech, Demosthenes is faced with a difficult task, because on the one hand he seeks to identify himself with the Athenian *dēmos* and, thereby, presents himself as a 'middling' citizen, while on the other hand his status as a *chorēgos*, a status that, as he recurrently argues, aggravates the hybristic nature of his opponent's attack, indicates that he belonged to the elite of wealth.[26]

Demosthenes accuses Meidias of striking a blow on his face in the presence of a large audience of spectators during the festival of the Great Dionysia. The legal nature of the case has been a matter of scholarly dispute,[27] but the text makes it plain that Demosthenes' rhetoric foregrounds Meidias' hybristic behaviour.[28] *Hybris* is a particularly important concept in the democratic discourse of classical Athens. As scholars have shown, the sources usually associate *hybris* with wealthy people, who, because of their power and sense of superiority display anti-social behaviour. The legal system of classical Athens included a public indictment against *hybris*, an indictment cited by Demosthenes in the course of the speech under discussion (47), but, as far as we can see, Athenian citizens found it impractical to use it in their prosecutions against their opponents. On the basis of our evidence, deriving mainly from speeches that involve acts of violence or sexual crimes, *hybris* was a strong symbol of antisocial and antidemocratic behaviour indicating repulsive dispositional characteristics, mainly self-indulgence and arrogance which urged individuals to acts that injured others' honour.[29]

The interdependence between *hybris* and wealth is a topic that Demosthenes exploits recurrently in the speech as a way of isolating Meidias from the

25 On this aspect of the speech see Mossé (1987).
26 On this topic see Wilson (1991) 172–174.
27 See Harris (1989); MacDowell (1990) 16.
28 For a different reading of *hybris* in paragraph 72 see Harris (1989) 117.
29 On *hybris* see Fisher (1992) and Cairns (1996).

body of law-abiding and middling Athenian citizens. His rhetoric, thus, relies heavily on contradistinctive characterisation: Demosthenes is a *metrios* citizen, a hoplite rather than a cavalryman, who has internalised the collaborative, democratic values of the city and seeks to be honoured by his fellow-citizens for his generous services.[30] By contrast, Meidias is a typical example of a self-interested member of the elite, who cares only for his personal gain and who uses his wealth as a means of showcasing his social superiority obnoxiously. A notorious problem concerning the applicability of the law of *hybris* is that, even as Athenians use the term frequently to castigate aggression, it seems that in forensic contexts it was extremely difficult to show that a specific action was commensurate with *hybris*. Demosthenes is well aware of the problem (72). As I argue, however, *enargeia* enables him to exploit this problem of definition.

The use of *enargeia* in the present speech has been discussed by Wilson, who highlights the theatrical aspects of Demosthenes' prosecution (1991, 176–177). In his rhetorical treatise on *The Art of Political Speech* (111, Dilts-Kennedy), the Anonymous Seguerianus adduces as an example of *enargeia* the passage under discussion(21.72), where Demosthenes appeals to the representational restrictions of speech in order to establish that it is practically impossible to convey the behavioural traits that make an aggressive attack commensurate with *hybris*. As the Anonymous puts it, the passage shows lucidly how *enargeia* is language that brings in front of our eyes 'things described'. Notably, Demosthenes' passage problematises the representational potentialities of speech and offers an instance in which rhetorical practice employs the meta-language of *enargeia* that we find in rhetorical theory.[31] By emphasising the limitations of speech, Demosthenes implies that the mental images that a speaker seeks to evoke in his audience through the use of words cannot be identical with autopsy: it is only the victim and eyewitnesses who can vouch for the hybristic nature of insolent aggression. The relevant passage runs as follows:

> οὐδὲ τὸ τύπτεσθαι τοῖς ἐλευθέροις ἐστὶ δεινόν, καί περ ὂν δεινόν, ἀλλὰ τὸ ἐφ' ὕβρει. πολλὰ γὰρ ἂν ποιήσειεν ὁ τύπτων, ὦ ἄνδρες Ἀθηναῖοι, ὧν ὁ παθὼν ἔνι' οὐδ' ἂν ἀπαγγεῖλαι δύναιθ' ἑτέρῳ, τῷ σχήματι, τῷ βλέμματι, τῇ φωνῇ, ὅταν ὡς ὑβρίζων, ὅταν ὡς ἐχθρὸς ὑπάρχων, ὅταν κονδύλοις, ὅταν ἐπὶ κόρρης. ταῦτα κινεῖ, ταῦτ' ἐξίστησιν ἀνθρώπους αὑτῶν, ἀήθεις ὄντας τοῦ προπηλακίζεσθαι. οὐδεὶς ἄν, ὦ ἄνδρες Ἀθηναῖοι, ταῦτ' ἀπαγγέλλων δύναιτο τὸ δεινὸν *παραστῆσαι* τοῖς

30 See Ober (1996) 77–78.

31 See Webb (2009b) chs. 1–2.

ἀκούουσιν οὕτως ὡς ἐπὶ τῆς ἀληθείας καὶ τοῦ πράγματος τῷ πάσχοντι καὶ τοῖς ὁρῶσιν *ἐναργὴς* ἡ ὕβρις φαίνεται (72–73)

[Nor is] being hit such a serious matter to free men (though it is serious), but being hit insolently. There are many things which the hitter might do, men of Athens, some of which the victim might not even be able to report to someone else—in his bearing, in his look, in his voice, when he displays insolence, when he displays hostility, when he strikes with the fist, when he strikes on the face. That is what arouses people, that's what makes them forget themselves, if they're not accustomed to being insulted. No one reporting this behaviour, men of Athens, could convey its seriousness to his listeners as vividly as the insolence is seen at the actual time by the victim and the onlookers.

transl. D.M. MACDOWELL

The present passage, including the word ἐναργής, foregrounds the lucid social signification of body language and, hence, stresses the restrictions of descriptive speech. For, according to Demosthenes, it is the perpetrator's gestures, gaze and vocal tone that reflect his dispositional personality traits and emotional state. Body language, with all its performative aspects, is offered as a powerful mechanism of social signification. Violence-cum-*hybris* is a social performance that incorporates recognisable somatic markers, even if Demosthenes declares that he is unable to describe them. Yet, despite its limitations, speech is the only available way of "making present" (παραστῆσαι) these socially recognisable bodily manifestations.[32] At the same time, by emphasising the victim's humiliation, the object of the spectators' gaze, the passage invites jurors to get emotionally involved in Demosthenes' suffering from a third person perspective.[33] Generic rather than specific, Demosthenes' description does not emphasise the details of his own personal suffering. By indicating the insolent nature of Meidias' aggressiveness, a behavioural trait that bystanders can readily locate in the perpetrator's gestures, Demosthenes urges his audience to understand what it feels like to suffer *hybris*. The situation is comparable with a much discussed modern American case of rape (*State v. Rusk*), where the victim claimed that she was scared of the perpetrator's "look in his eyes", rather than his words.

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32 For παρίστημι, Apsines (*Art of Rhetoric* 31, ed. and transl. Dilts and Kennedy (1997) 220) with Webb (2009b) 163 n. 97.

33 On *enargeia*, empathy, and audiences' emotional involvement, see Blundell et al. (2013) 13.

Demosthenes' emphasis on the limited representational potentialities of speech serves his rhetorical purposes effectively. Given that *hybris* was notoriously difficult to establish, Demosthenes appeals to the non-verbal, somatic markers of hybristic aggression. But it is only through speech that he can add visibility to what otherwise remains invisible. The mental images that he creates through the elliptical description of the perpetrator's gestures are the product of a speech that tactfully undermines its ability to convey with accuracy the object of first-hand, visual perception and, correlatively, a speech that tacitly concedes its inferiority to non-verbal signification. Elliptical language and the descriptive limitations of speech are thus employed in the service of Demosthenes' rhetoric, because they activate the listeners' imagination. Demosthenes' elliptical language confirms the community's shared ability to recognise instances of *hybris* when they see them and, thus, prompts the jurors to use their social competence and supply the normatively significant details that elevate Meidias' attack into an act of *hybris*.

4 Enargeia and Benign Envy

In this section, I turn my attention to *enargeia* and legitimate or what Rawls (see below) describes as "benign" envy. In his recent book on envy, Sanders (2014) argues that there are only a few instances in the corpus of the Attic orators where speakers use 'good' envy as a means of prejudicing judges against their opponents. Sanders points out that this scarcity of evidence may be due to the fact that "('bad') *phthonos* was so socially unacceptable that orators felt uncomfortable using *the word* even to mean morally acceptable resentment" (94, the emphasis is mine). Sanders is certainly right that uses of the word *phthonos* to signify "benign" or "legitimate" envy are not particularly common in the orators.[34] It is equally true that in other contexts, such as *Against Leptines*, where Demosthenes deals with an ideologically sensitive issue,[35] as he argues against Leptines' law abolishing *ateleia*, envy is criticised severely. In fact, in that speech Demosthenes carefully construes envy as a remote possibility and

34 I prefer the terms "benign" or "legitimate" envy because, unlike "bad" envy, they indicate that the emotion requires ethical judgment. I discuss other uses of benign envy in Spatharas (2014).

35 Demosthenes defends liturgists' *ateleia*. At 140–142, he presents Athenians' envy as a remote, albeit morally inappropriate, possibility. Envy, he argues, impinges on the generosity of Athenian identity. On this passage see Kremmydas (2012) note ad loc.; on envy in this passage see Sanders (2014) 90–91 and Spatharas (2014) 117–118.

argues that the emotion is incompatible with the polis' ethos.[36] However, Sanders' suggestion that the scarcity of passages referring to benign envy could be due to the overriding negative connotations of *phthonos* deserves further discussion. If speakers refrain from using *phthonos* solely on account of the word's negative resonances, how would we account for cases, like the one from *Against Meidias* that Sanders discusses extensively, where speakers venture to invite jurors to express through their votes their sentiments of "benign" envy against their opponents? In other words, if envy is morally condemnable, why does Demosthenes remain confident that his appeal to his audience's legitimate envy will not reflect badly upon him?

As I argued elsewhere (Spatharas 2014), Skinner's work on the language of ideology can help us understand with better hopes of accuracy the uses of envy in the public discourse of classical Athens. As Skinner points out,[37] the ideological disagreements concerning the use of concepts in the frame of arguments are not just a matter of linguistic signification. The disagreement between a Marxist and a Neo-liberal on the notion of migrants' "exploitation", for example, does not concern the dictionary definition of the label "exploitation". Their disagreement concerns the "criteria of application" of this word and, thereby, the appropriateness of its uses when it is employed to describe social tensions surrounding e.g. immigrants' conditions of work or the wealth that they produce and its distribution. As this example indicates, the criteria of application revolve around social realities rather than semantics on a purely linguistic level. Furthermore, Skinner usefully points out (2002, 151), that new ideological schemata are more effective when they use old labels rather than when they invent new ones. But the use of old concepts in the frame of new ideological uses frequently requires reversal of the criteria of their application. This is particularly relevant to our discussion of envy, an emotion that, as far as we can see, played a predominant role in the elites' stigmatisation of the masses' egalitarian demands.

The few instances of "benign" envy in the orators, a notion commensurate with Aristotle's *to nemesan* ("indignation"), can be interpreted as a reversed democratic use of a key-concept that the elites deployed in their anti-egalitarian propaganda at a point where 'aristocracies' started to lose their privi-

36 According to Sanders (2014) 91, Demosthenes seeks to suppress "bad" envy in his audience. But Demosthenes carefully constructs a scenario of (avoidable) envy in order to cause his audience's shame. He thus emphasises the pivotal role of *charis* in the competitive environment of the city.

37 See Skinner (2002) 165–169.

leges.[38] To use Skinner's terms, democratic ideology appropriated envy in its conceptual arsenal, but, in order to do so, it democratised its "criteria of application". In democratic Athens, benign envy became a morally responsive sentiment involving evaluations concerning desert in a civic environment that honoured political equality. The cognitive framework of democratic, benign envy came to include judgements concerning (especially wealthy) citizens' willingness to offer their services to the city, especially but not exclusively by undertaking liturgies. To oversimplify, no one deserved the benign envy of his fellow-citizens—roughly equivalent to Aristotle's "indignation"—*because of* his wealth *per se*.[39] Hence, the consideration of desert involved in the appraisals that informed "benign" envy in democratic discourses was determined by pivotal concerns surrounding citizens' respect for the democratic function of the polis and their fulfilment of their civic responsibilities. Desert also included evaluations concerning wealthier citizens' public recognition of the *dēmos*' privilege of distributing honours in exchange for their services to the city.

As we shall see, in *Against Meidias* (and in some other passages identified by Sanders),[40] Demosthenes invites the judges to give vent to sentiments of legitimate envy. But his appeal to this emotion is carefully framed in a passage that rests on the notion of desert. According to Demosthenes, Meidias *deserves* Athenians' "benign" envy, rather than their pity,[41] because of the self-interested way in which he used his private wealth. This passage, which fully exploits the potentialities of *enargeia*, shows that Athenian civic audiences were able to dissociate the socially responsive emotion of legitimate envy from the morally irresponsive emotion that Aristotle castigates in his *Rhetoric*. This dissociation is achieved through Demosthenes' construction of a conceptual

38 On the methodological problems involved in applying the term aristocracy to ancient "aristocracies" see now the excellent Introduction of Fisher and Van Wees (2015).

39 On money and benign envy see Sanders (2014) 93, who prefers the qualification "good" *phthonos*.

40 Sanders (2014) 43.

41 Note that, because Aristotle excludes "desert" from the evaluations that give rise to envy, he criticises those who take envy to be the opposite of pity (*Rh.*1386b 16–20). For Aristotle, the opposite of pity is *to nemesan* ("indignation"). Demosthenes, however, proclaims that, because of his lifestyle, Meidias deserves the citizens' envy rather than their pity (21.196). This passage is a further indication that, despite Aristotle's definition of envy, in the democratic discourse of classical Athens "legitimate" envy can be seen as the opposite of "pity", an emotion that requires evaluation of the target's misfortune. For a similar understanding of envy see Anaximen. *Rhet. ad Alex.* 36.49–50.

framework that relies largely on Meidias' private life. In the context of this conceptual framework, "envy" must be understood as a democratic sentiment that secured the polis' public interest and asserted political equality rather than as a reprehensible dispositional characteristic.

As we saw earlier, Demosthenes' rhetoric in *Against Meidias* invests in contradistinctive characterisation. This line of argument makes it necessary for Demosthenes to present himself as both a *metrios* democratic citizen *and* a wealthy liturgist who spent profusely on liturgies. Thus, the effectiveness of his argument depends on character assassination. Unlike Demosthenes, who acts as a guardian of citizens' interests and a champion of democratic equality—the narrative about Straton is particularly suggestive—,[42] Meidias is a typical example of a greedy and self-interested member of the elite who is insensitive to the fact that in the democratic environment of classical Athens public services are the only appropriate way of securing honours. Luxury and public displays of one's social superiority function as a harsh reminder of the existing social inequalities. These inequalities can be redressed through the jurors' verdict. In a significant "autobiographical" passage,[43] Demosthenes compares in detail his own rich liturgical record with Meidias' longstanding unwillingness to spend even a small part of his property for the polis (154–157). Notably, this passage introduces Demosthenes' vivid description of Meidias' use of his wealth as a means of establishing his superiority over poor citizens.

Elsewhere in the speech, Demosthenes emphasises Meidias' *hybristic* contempt for the *dēmos* by stressing his opponent's condescending view of the lower classes. At 209, for example, the speaker puts together an imaginary scenario according to which, if a poor man defended himself in a court of law full of wealthy citizens, he would receive harsh and offensive treatment. Elsewhere, Demosthenes attempts to pre-empt Meidias' argument that he donated a trireme by telling a story showing that this donation was used by Meidias as a pretext for avoiding cavalry service (160–167). In the same context, Demosthenes stresses (note the use of *kataptystos*) that Meidias saw his public service as an opportunity for personal gain. Later in the speech, he emphasises that Meidias' service as paymaster of the state trireme was corrupt and ineffective. Indeed, despite his wealth, Meidias led the processions on a borrowed horse (171–173).

42 Ober (1996); for a different interpretation, see Wilson (1991) who, unjustifiably, in my view, argues that Demosthtnes' cunning account of Straton's *atimia* is misleading.

43 I obviously use the word "autobiographically" *sensu lato*. On self-praise (and envy) in the orators, with relevant bibliography, see Spatharas (2011).

These passages indicate that Demosthenes' rhetoric aims to construct a conceptual framework that focuses on Meidias' contempt for the less powerful members of the *dēmos* and, more importantly, on the misuse of his wealth. This conceptual framework appeals to ideological assumptions through which Demosthenes invites the jurors to express openly sentiments of legitimate envy. In what follows, I propose to discuss in detail paragraphs 158–159, a passage where *enargeia* plays a pivotal role. As I argue, *enargeia* in the present context enables Demosthenes to add visibility to Meidias' wealth and luxuriousness. The details of his description—depicting specific possessions or habits—not only aim to offer a recognisable emotion script, but also indicate that every aspect of Meidias' lifestyle is in breach of fundamental concerns and norms of the polis' ideology.

In his classic work, *A Theory of Justice*, Rawls points out that, "those who express resentment must be prepared to show why certain institutions are unjust or how others have injured them. *What marks off envy from the moral feelings is the different way in which it is accounted for, the sort of perspective from which the situation is viewed*" (John Rawls, *A Theory of Justice*, the emphasis is mine). In the passage that I propose to discuss, *enargeia* helps Demosthenes bring Meidias' possessions and excessive lifestyle in front of the "jurors' eyes". Visual *logos*, therefore, is a medium through which Demosthenes shows how Meidias' prosperity "injures", to use Rawls' locution, the city and its interests. Furthermore, his description predictably appeals to shared assumptions concerning one's prosperity and, thus, indicates that vivid narratives are verisimilar only when they appeal to and assert commonly shared assumptions and normative concerns. Through the ideological specificity of his vivid description, Demosthenes not only elicits, but more importantly frames his audience's emotional responses.

Detailed descriptions, rhetorical theory avers, are a requirement for effective *enargeia*.[44] The present passage, with its descriptive specificity, emphasizing Meidias' sumptuous possessions and lifestyle, gives Demosthenes the opportunity to offer his audience a palpable account of his opponent's excessiveness. At the same time, the specificity of his vivid description, including carefully chosen examples of Meidias' lifestyle, incorporates potent ideological understandings concerning the contradictions between citizens' private lavishness and their political aspirations. Material culture is used here as a strong indication of Meidias' anti-democratic predilections. *Enargeia*, therefore, gives Demosthenes the opportunity to construct an emotion script, which indicates

44 On the importance of details, see Webb (2009b) 74–75.

why legitimate envy is the appropriate and morally responsive emotion that Meidias deserves. The passage that I propose to discuss runs as follows:

> τίς οὖν ἡ λαμπρότης, ἢ τίνες αἱ λῃτουργίαι καὶ τὰ σέμν' ἀναλώματα τούτου; ἐγὼ μὲν γὰρ οὐχ ὁρῶ, πλὴν εἰ ταῦτά τις θεωρεῖ· οἰκίαν ᾠκοδόμηκεν Ἐλευσῖνι τοσαύτην ὥστε πᾶσιν ἐπισκοτεῖν τοῖς ἐν τῷ τόπῳ, καὶ εἰς μυστήρια τὴν γυναῖκ' ἄγει, κἂν ἄλλοσέ ποι βούληται, ἐπὶ τοῦ λευκοῦ ζεύγους τοῦ ἐκ Σικυῶνος, καὶ τρεῖς ἀκολούθους ἢ τέτταρας αὐτὸς ἔχων διὰ τῆς ἀγορᾶς σοβεῖ, κυμβία καὶ ῥυτὰ καὶ φιάλας ὀνομάζων οὕτως ὥστε τοὺς παριόντας ἀκούειν. ἐγὼ δ' ὅσα μὲν τῆς ἰδίας τρυφῆς εἵνεκα Μειδίας καὶ περιουσίας κτᾶται, οὐκ οἶδ' ὅ τι τοὺς πολλοὺς ὑμῶν ὠφελεῖ· ἃ δ' ἐπαιρόμενος τούτοις ὑβρίζει, ἐπὶ πολλοὺς καὶ τοὺς τυχόντας ἡμῶν ἀφικνούμεν' ὁρῶ. οὐ δεῖ δὴ τὰ τοιαῦθ' ἑκάστοτε τιμᾶν οὐδὲ θαυμάζειν ὑμᾶς, οὐδὲ τὴν φιλοτιμίαν ἐκ τούτων κρίνειν, εἴ τις οἰκοδομεῖ λαμπρῶς ἢ θεραπαίνας κέκτηται πολλὰς ἢ σκεύη καλά, ἀλλ' ὃς ἂν ἐν τούτοις λαμπρὸς καὶ φιλότιμος ᾖ, ὧν ἅπασι μέτεστι τοῖς πολλοῖς ὑμῶν· ὧν οὐδὲν εὑρήσετε τούτῳ προσόν
>
> 158–159

> So what is his distinction? What are his liturgies, and his impressive expenditures? I cannot see any—unless these are the items that one considers: he has built a house at Eleusis so big that it overshadows everyone in the neighbourhood; he takes his wife to celebrations of mysteries, and anywhere else he wishes, in a carriage drawn by the pair of white horses that he got from Sikyon; and he clears a way for himself through the Agora with an escort of three or four slaves, talking about "cups" and "drinking-horns" and "chalices" loudly enough for the passers-by to hear. Well, when Meidias acquires possessions for the sake of his persona luxury and advantage, I do not know what use they are to the majority of you; but when he is impelled by them to behave insolently, I can see that does affect many ordinary people among us. That surely is not the kind of conduct you should honour and admire when it occurs; nor should you judge aspirations to honour by these criteria—whether a man builds a distinguished house or possesses a lot of maidservants or fine furniture: you should look for a man whose distinction and aspiration to honour are in things of which the majority of you all have a share. You'll find that none of this applies to Meidias
>
> transl. D.M. MACDOWELL

Before I look into Demosthenes' careful account of Meidias' private life, it is important to note that the passage under discussion is framed by pivotal concepts and values of democratic ideology to which he appeals openly.

The notion of *lamprotēs* with which Demosthenes introduces the passage must be interpreted together with the notion of *philotimia* (note that *philotimias* is conjoined with *lamprotēs* at the end of the passage). Considerations of space do not allow me to offer a full account of these notions. Be it sufficient to mention that in the time of Demosthenes, *philotimia*, a word that literally signifies 'love of honour', 'ambitiousness' is a term through which prominent Athenian citizens are commended for their services to the city. In addition, *philotimia* is inextricably interwoven with the notion of *charis*.[45] *Philotimia* primarily indicates a reciprocal relationship between the most prominent Athenian citizens and the masses. If members of the Athenian elite compete for honours in the public sphere of the polis, the Athenian *dēmos* alone is responsible for the distribution of these honours. In recognition of their services to the city, which commonly took the form of public spending and military services, the *dēmos* returned its *charis* to prominent Athenian citizens by distributing honours to them. In the democratic ideology of Demosthenes' times, *philotimia* is a term of praise indicating acts that sustained social cohesion. The relevant notion of *lamprotēs* has a long history. In its pre-democratic uses, *lamprotēs* indicates aristocratic display. But, as Wilson argues (2000, 138–143), in the frame of the democratic polis the word acquires a new field of application, signifying primarily lavish public expenditure, especially in the context of *chorēgia*.

The crucial importance of these two correlated notions in the present context is lucidly brought out in the concluding locution, where Demosthenes invites jurors to realise that they have no share in Meidias' *philotimia* and *lamprotēs*. This is an instance of powerful egalitarian rhetoric. Unlike Demosthenes, who has a rich liturgical record, Meidias' *philotimia* and *lamprotēs* isolate him from the *dēmos*. His egoistic, self-centred ambitiousness is private rather than public and fails to recognise that the sole responsibility for the distribution of honours in the city rests with the Athenian *dēmos*, who benefits from wealthy citizens' services (cf. ὧν ἅπασι μέτεστι τοῖς πολλοῖς ὑμῶν).

These preliminary points concerning the ideological basis of Demosthenes' rhetoric are particularly important for our understanding of his vivid account of Meidias' private wealth.[46] Meidias' costly and excessive private lifestyle is in

45 On *philotimia* see Wilson (2000) 187–193; Fisher (2003), with criticism of Wilson's understanding of the term.

46 No doubt, Demosthenes' normative discourse idealises social consensus. This idealisation enhances his self-presentation as a champion of democratic equality and highlights his adherence to the values shared by the "many". For a sober criticism of scholars identifying the discourse of court speeches with social realities and, thereby, overemphasising social consensus, see Fisher (2010) 72 f.

breach with the collaborative values that bond together the powerful citizens with the masses in a relationship regulated by reciprocity. As far as Meidias is obsessed with his public displays of superiority over his fellow-citizens, especially the less powerful among them, he endorses an antidemocratic type of *philotimia*.

The notion that Meidias' *philotimia* is private is elaborated by Demosthenes when he emphasises how his opponent attempted to harm his *choregic* service for his tribe. Meidias' love for honours fails to recognise the *dēmos*' power and privilege to decide who deserves to be honoured, because he was not Demosthenes' *antichorēgos* and therefore he did not compete with him in a public *agōn* whose outcome was determined by the *dēmos*' verdict.[47] Meidias acted as a rival in a private, one-sided and therefore illegitimate competition, because he was motivated by his hybristic sense of superiority. The assumption that Meidias understands competition as a matter of personal display rather than as a regulated opportunity for public spending is rhetorically exploited by Demosthenes at the beginning of the passage under discussion. The use of the verbs ὁρῶ and θεωρεῖ prepares the ground for a spectacle and is significantly enhanced by the sensory qualities of *lamprotēs*, which activate jurors' imagination. That Demosthenes prepares the ground for the description of a spectacle is also brought out when he ingeniously anticipates the possibility that the jurors may be awed by Meidias' possessions (θαυμάζειν).[48] The verb θεωρῶ in particular introduces an invitation to a peculiar *theoria*, i.e. a visit to a spectacle, which, in the present case, is Meidias' privately accumulated wealth. Furthermore, it points to the markedly theatrical aspects of loudmouthed Meidias' obnoxious and antisocial behaviour.[49] If Demosthenes is a habitual liturgist, who undertakes the task of offering money for a public spectacle, i.e. a costly dithyrambic chorus in the frame of the Great Dionysia, Meidias' private "brilliance"—a "brilliance" that deprives the polis of his money—is so great that it can be the object of an awe-inspiring spectacle of ostentation.

Meidias' spectacular wealth, the object of the peculiar *theoria* to which Demosthenes invites the jurors through his vivid account, is carefully described. The first item that Demosthenes refers to is Meidias' house at Eleusis. Notably, Demosthenes emphasises the size of his opponent's house by indicating that it was so big that it covered the surrounding houses in darkness. With

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47 On the agonistic aspects of choregic spending see Wilson (2000) 144–172.

48 On the interconnections between *thauma* and *theoria* see Nightingale (2004) 256–257.

49 Worman 2008 *passim* empahsises the interconnections between loud speakers, shamelessness and violence.

the verb ἐπισκοτεῖν ("overshadow"), no doubt a rhetorical exaggeration, Demosthenes not only stresses the size of Meidias' house, but also highlights the repercussions of its owner's selfishness upon his neighbours' daily lives. Furthermore, the present reference to "darkness" is symptomatic of Demosthenes' rich imagery in a context full of visual and acoustic images, which highlights the sparkling surfaces of Meidias' possessions and his loud public displays. Meidias' private "brilliance" (*lamprotēs*) deprives his neighbours of sunlight.[50] The next detail that Demosthenes reveals is Meidias' use of a carriage led by two horses from Sikyon to take his wife to public festivals and elsewhere.

Demosthenes' reference to Meidias' horses and use of a carriage are socially significant—status symbols rather than just commodities. By presenting his opponent as a *hippotrophos*, Demosthenes not only implies that his poor liturgic record facilitated an excessive private life, but also insinuates that Meidias is a possible enemy of democracy. In his discussion of the present passage, Wilson has pointed out that Demosthenes' portrayal of Meidias relies on stereotypes surrounding tyrants' lifestyle.[51] Wilson's point, emphasising Meidias' antidemocratic conduct, gains further significance if we take into account the ideological implications of material culture.

According to a well-known and much debated incident described by Herodotus (1.60), Peisistratus returned to the city of Athens on a chariot, on which he had placed a beautiful girl, Phye, dressed as Athena.[52] Regardless of the individual details of this public display or the historical accuracy of Herodotus' account, the incident indicates that carriages or chariots were used in aristocratic contexts as a symbol of power. As Sinos (1998) shows, chariots blur the limits between human and divine nature and serve as a vehicle for displaying one's heroic status. Standing higher than the rest of the citizens, charioteers attracted the attention of passers-by and, correlatively, advertised their superiority over the rest of the *dēmos*. Furthermore, it is particularly significant that Meidias used a "posse", as MacDowell rightly understands the word "attendants" (ἀκολούθους), when he swaggered in the agora. This image is also in pace with Meidias' portrayal as an aristocrat with tyrannical predilections. As our sources make clear, tyrants relied on bodyguards to either establish or maintain their power.[53] Demosthenes' reference to Meidias' attendants, therefore,

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50 On the visual aspects of *choregic lamprotēs* see Wilson (2000) 139–140. On evidence concerning the ideological implications of luxurious houses in classical Athens see Millet (1998) 209–212.

51 See Wilson (1991) 182–184.

52 On Herodotus' narrative about Phye see Connor (1987) and Bell (2004) 71–72.

53 On tyrants' use of bodyguards see Lavelle (1992).

highlights his opponent's contempt for the rest of the citizens who are forced by a bunch of bodyguards to get out of his way, but also indicates an outrageous excessiveness, which ignores the democratic ethos of the polis.

Before I proceed to discuss Meidias' sympotic possessions, it would be appropriate to comment briefly on Demosthenes' choice of location for his opponent's displays of wealth and power—the agora. As Shear argues, (2007, 199–222), "[I]n the context of the years after 411 … the construction projects in the Agora allowed the *dēmos* to gain control of this contested space and to stamp its possession visibly on the square. These structures displayed the democratic system in operation and reinforced the dynamics, which we have observed with the inscribed documents. Together, buildings and texts identified the Agora as a space now particularly associated with the rule of the *dēmos*" (p. 122). Shear's comments on the ideological signification of the agora's architecture offer a key to our understanding of why Demosthenes chose to "stage" the instances of Meidias' ostentation in this ideologically significant public space. Meidias' displays of excessiveness, with all their performative qualities, are set in a civic space that represents the polis' democratic ethos.

According to Demosthenes, Meidias swaggers in the agora and talks loudly about his "cups", his "drinking-horns" and his "chalices". The audience at these performances of sympotic luxuriousness is his fellow-citizens, in other words common people who, just like most of the judges, were restricted to a more frugal lifestyle. However, it is important to bear in mind that the agora was also the place of the Tholos, the public building that served as a meeting place for the *prytaneis*. The Tholos was also the place where the *prytaneis* were fed at public expense. The circular rather than rectangular shape of this building, in which the *prytaneis* dined seated rather than reclined, has been interpreted by scholars as an indication of the democratic polis' ideological distancing from the aristocratic symposium. As Cooper and Morris claim, the Tholos was 'perhaps the first politically designed building in Western culture' (1990, 79).[54] Furthermore, several examples of ordinary pottery with the indication ΔΕ, standing for the word δημόσιον, have been taken to indicate the moderation of the democratic *syssitia*.

Even if, as Fisher (2000) has argued, in the course of the late 5th and 4th centuries the symposium, along with other activities of the so-called "leisure class", became accessible to less powerful and less wealthy citizens, our evi-

54 See also Rotroff-Oakley (1992) 39–50; Steiner (2002) 348–351. On the public nature of dining, see Schmitt-Pantel (1992) 176–177. Luke (1994) 25–32 discusses the democratic features of the *syssition*, including the absence of a "mixing-bowl" (*kratēr*).

dence from the orators indicates that the symposium remained in Athenian civic imagination an 'aristocratic' privilege of the most affluent citizens. Furthermore, orators frequently associate the symposium and heavy drinking with hybristic misconduct. Note for example that in Demosthenes' *Against Conon*, a speech composed for a case of battery, Ariston, the young prosecutor, claims that before Conon and his sons attacked him in the agora, they were dining in a symposium, while during their military service at Panacton, Conon's sons exhibited the sympotic *hybris* that they habitually practised in the city.[55] In Demosthenes' narrative, Meidias employs his public display of his luxurious sympotic objects as an indication of his superiority in a self-dramatised performance of ostentation.

The fact that Demosthenes places Meidias' loud public displays of private wealth in the agora, the civic centre of Athens, which, as we saw, symbolised the rule of the *dēmos*, is significant. Meidias' sympotic ostentation contravenes the norms that regulate democratic dining at the Tholos, a building exemplifying the decorousness of modest democratic commensalities. Meidias uses his wealth to obnoxiously advertise his superiority in an environment that symbolises in every possible way the keystone of democratic ideology, i.e. citizens' equality.

5 Conclusion

The previous section emphasised the importance of Demosthenes' vivid description of Meidias' property and luxurious lifestyle. As Rawls claims, the distinction between benign and dispositional envy, a morally reprehensible sentiment, requires moral judgments involving the perspective from which the situation is viewed. The passage of Demosthenes that I have discussed employs *enargeia*, i.e. a vivid description of Meidias' luxurious lifestyle, as a way of providing the judges with a conceptual framework in the context of which he explains why his opponent deserves their indignation. As we saw, ancient theory of *enargeia* indicates that vivid narratives serve the purpose of eliciting emotions by appealing to mainstream ideological assumptions. The citizens' shared ideological priorities in which Demosthenes invests here revolve primarily around wealthy Athenians' use of their property and their political predilections.

55 Cp. D. 54. 3–4. For other instances of hybristic behaviour in sympotic contexts see, for example, Lysias 3; 4; fr. 279 (Carey).

In order to convince the jurors that Meidias does not deserve his prosperity, a prosperity that isolates him from the Athenian *dēmos*, Demosthenes offers a detailed description of his opponent's possessions, which he introduces as a *theoria*. Through his detailed account he activates the jurors' imagination and invites them to absorb the spectacle of Meidias' private luxuriousness. Yet, this spectacle of private wealth is possible because Meidias deprives the Athenian *dēmos* of *public* spectacles such as the choral competition in which Demosthenes acted as a *chorēgos*. Demosthenes carefully selects the details of his description and thereby emphasises Meidias' use and display of status symbols. The mental images that Demosthenes produces are thus offered as obvious, indeed visible evidence of the appraisals that must guide the jurors' sentiments towards his opponent. As far as these appraisals revolve around illegitimate accumulation of wealth, an unacceptable sense of superiority and insensitivity to the ideological imperative of equality, the label that best describes Demosthenes' emotion script is τὸ νεμεσᾶν.

CHAPTER 13

How to "Act" in an Athenian Court: Emotions and Forensic Performance

*Edward M. Harris**

In Euripides' *Hippolytus* (874–875, 877–880, 882–884), when Theseus discovers the reason for Phaedra's suicide by reading the note she has left, he bursts into painful laments.

> Oh, woe! What second pain on top of pain
> is this, pain unendurable, unspeak-
> able. What misery is mine!
> (…) This tablet cries aloud, it cries aloud
> of horror. How shall I escape from
> the weight of my misfortunes? I am
> utterly undone, such is the song I
> in my wretchedness
> have seen whose tune sounds in the writing! (…)
> No more shall I hold this ruinous bane
> hard ⟨for words⟩ to utter though it is, within
> the gates of my mouth!
>
> transl. D. KOVACS

The evil he suffers is "unbearable and unspeakable"; he is wretched (*tlamôn*) (875–876). He exclaims, "where can I escape this burden of misery?" (878–879). He is 'utterly destroyed and dead' (879). To emphasise his emotional reaction, Euripides employs the rhetorical figure of anadiplosis, not once but twice in three lines.[1] By contrast, when Euphiletus describes his reaction to the news of

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1 Note that Aristotle *Rh.* 3.12.2.1413b says that repetition of the same word is not appropriate in

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his wife's infidelity in Lysias' speech *Against Eratosthenes*, he only expresses his bewilderment (Lys. 1.17):

> After she said this (the story of his wife's seduction) and went away, I was immediately troubled, and everything that had happened came back to me, and I was full of suspicion when I thought about how I was locked out of the bedroom, then remembered how during that night both the inner and the outer door made a sound, which had never happened before, and how I noticed that my wife had put on make-up. All these thoughts occurred to me, and I was full of suspicion.

When he recounts how he caught his wife and her lover *in flagrante*, he does not describe his own sense of outrage or emotional pain (Lys. 1.24–26):

> Shoving in the door of the bedroom, the first of us to enter saw him still lying next to my wife, those coming in later saw him standing on the bed naked. Gentlemen, I punched him and knocked him down, then, after pulling his arms behind his back and tying them, I asked him why he was committing *hybris* by entering my house. He admitted his guilt, but begged and supplicated me not to kill him but to exact a sum of money. I replied, 'It is not I who will kill you, but the law of the city, which you have violated and considered less important than your pleasures. You have chosen instead to commit such a crime toward my wife and my children rather than to obey the law of the city and to behave decently.' In this way, gentlemen, he received that punishment that the laws permit for those who commit such crimes.

Euphiletus recounts only how he found Eratosthenes and what he did and said to him. The stress is not on his own emotions, which he does not describe, but the wrongs committed by Eratosthenes and the legal justification for his own actions. He is not the angry husband who kills in a rage, but a citizen who has transformed himself into the impassive law of Athens.

One finds the same contrast between Teucer's discovery of his half-brother's suicide in Sophocles' *Ajax* (992–1005) and Lysias' account of his brother's execution by the Thirty (Lys. 12.17–19). In Sophocles' play, Teucer expresses himself in highly emotional terms:

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written speech, by which he appears to mean law court speeches. All translations of Greek passages are mine unless otherwise indicated.

> Oh, most grievous of all the sights that my eyes have looked upon! O path that has pained my heart the most of all the paths that I have travelled, path that I trod just now, dearest Ajax, when I realised that I was pursuing and tracking down the manner of your death! Yes, a swift-moving rumor, as though the work of some god, went through all the Achaeans, that you were dead and gone; and when I heard it, poor fellow, I mourned quietly while I was far off, but now that I can see I am stricken to death! Alas, uncover him so that I may see the whole horror! O face dreadful to look on, face that reveals such bitter courage, what pains have you sown far and wide for me in your death!
>
> transl. LLOYD-JONES

As we will see later in this chapter, Lysias by contrast has little to say about his own emotions at the death of his brother. One might add that in the passages from tragedy we find exclamations like *io, io* and *oimoi* and adjectives like *tlâmon*, *algiston*, *dystēnos*—the only time we encounter a tragic exclamation in oratory is when Demosthenes (19.209) ridicules Aeschines for shouting *iou, iou*. When Aeschines attempted to use expressions like this, Demosthenes takes him to task for using *logaria dystēna*, pathetic words (D. 19.255).[2] In the *On the False Embassy* and again in *On the Crown* Demosthenes ridicules Aeschines for his tragic style (D. 18.13; 19.189). In Hyperides' speech *For Lycophron*, the accuser faults his opponent for filling his charge of *eisangelia* with tragedies (Hyp. *Lyk.* 12: *tragoidias grapsai*. Compare the criticisms of Olympias at *Eux*. 26).[3]

This chapter explores how litigants 'acted' in court when describing the wrongs they have suffered. Recent essays by Edith Hall and Craig Cooper have drawn attention to analogies between acting on tragic stage and the performances of litigants in court.[4] The aim of this essay is to study the differences

2 MacDowell (2000) 311 does not comment on Demosthenes' use of the adjective *dystēna*, which occurs only here in Demosthenes and never in Aeschines, Andocides, Antiphon, Dinarchus, Isaios, Isocrates, Lycurgus, and Lysias.

3 Hall (2006) 384 cites these passages as evidence for tragic performance in court, but fails to note that the litigants are criticising their opponents for using tragic language. The passage from *Against Euxenippus* in fact refers only to the use of tragic language in accusations, not to tragic performance in court. Bers 2009 makes similar but different criticisms of Hall.

4 Hall (2006) 353–392, esp. 391–392; Cooper (2004). Ober (1989) 153 claims that "Theater-going citizens 'learned' to suspend disbelief. The theatrical audience entered into a conspiracy with the playwright and actors, which allowed the theatrical experience to take place. This 'training' helped jurors (*sic*) to accept elite litigants' fictional representations of their own circumstances and their relationship to the Athenian masses. The complicity of speaker and

between the two genres, especially concerning the expression of emotion, which are far greater than any superficial similarities. The main point of this essay is that tragic characters often describe their emotional reactions, but litigants in court rarely, if ever, mention their own feelings. The tragic poets also try to stir fear and pity by providing horrific details in their descriptions of violence. By contrast, litigants in court tend to avoid describing acts of violence in sensational ways designed to arouse indignation. That is not to say that accusers, defendants and supporting speakers did not try to arouse the anger or pity of the judges.[5] But they had to do it in a way that would not undermine their own credibility and avoid giving the impression that they were attempting to distract the judges from the legal issue.

A good place to start is Sophocles' *Philoctetes* because the lead character feels that he has been wronged and Neoptolemus claims to have been treated unjustly. When describing his reaction to the discovery that the Greeks had abandoned him on the island of Lemnos, Philoctetes speaks of the tears he shed and his suffering (276–284). Then when Philoctetes asks him why he has left Troy, Neoptolemus describes the anger he felt when he learned that Odysseus had taken the arms of his father Achilles (322–326). He bursts into tears, feels rage, then acts on his anger by heaping insults on Odysseus (367–370, 374–376). In the play of Sophocles named after her, Electra speaks of both her anger (222, 1282) and her hatred toward her mother and Aegisthus.

This expression of emotions in this way by a litigant was considered out of place in court. Those who claim to have been wronged never tell the judges that they are angry. Even though Demosthenes claims to have been treated abusively by his opponent Meidias, he never lays stress on his own emotions. Only once in the speech does he say that the judges should be as angry as he is when he sees rich men treating poor men unjustly (D. 21.123). But note that in this case, Demosthenes expresses his indignation at the suffering of others, not his own. On the other hand, accusers often tell the judges that they should be angry because the defendant is guilty and has broken the law. It was

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audience to create and accept dramatic fictions regarding social status was an important factor in the maintenance of Athens' social equilibrium". Ober 1989: 155 speaks of the "congruity between the theater and the Assembly" and claims that "the political orator, like the private litigant depended on his audience's willingness to suspend disbelief". One hastens to point out that judges who convicted elite litigants to fines, exile, or execution for bribery or treason did not "suspend disbelief" when it came to their denials of guilt. For additional criticisms of Ober, see Herman (2006) 151.

5 On stirring emotions in court, see Sanders (2012) who does not however observe the differences between forensic oratory and tragedy.

appropriate for judges to feel anger when punishing a defendant for an offense. One must not make the mistake of considering anger an extra-legal argument, which can be used in addition to arguments about the law. In forensic oratory, accusers first show that the defendant has violated the law, then say that the defendant deserves the judge's anger because he has done wrong (e.g. D. 21.46; 22.39; 24.218). Anger is always associated with punishment to be inflicted by the court on those proven guilty, never as an argument about guilt.[6]

On the other hand, no litigant ever states that he brought his case to court because he was angry. Appendix 1 contains a list of all the passages in Demosthenes' forensic speeches in which words for anger occur. In almost none does the speaker express his own anger. One never finds the verb *orgizomai* in the first person singular.[7] In fact, in one case a litigant says that he restrained himself from feeling anger with his opponent because it was not the right time. Another litigant actually denies feeling anger. In Isaios litigants never describe themselves as angry—the only time the verb is used repeatedly is in *On the Estate of Cleonymus*, where it is used to describe the state of mind of Cleonymus when he made his will, and here the connotations of anger are negative (Is. 1.3, 10, 14, 18).[8] Anger is a form of madness, which puts him out of his right mind and makes his actions invalid.

When Demosthenes wishes to convey to the judges the emotional impact of an insulting punch, he does not describe his own reaction to Meidias' insolence but to those of two other men who were also struck in an insulting manner. First, he recalls the story of Euthynus, who was struck by Sophilus in a way he found insulting and hit him back with such force that he killed him. Second, he describes how Euaeon killed Leodamas for the same reason (D. 21.71).[9] Instead of describing his own feelings, Demosthenes (21.72) explains to the judges what made Euthynus and Euaeon react so violently:

> It was not the blow that aroused his anger, but the humiliation. Being beaten is not what is terrible for free men (although it is terrible), but being beaten with the intent to insult. A man who strikes may do many

6 Anger can also be the reason for an unjust verdict if it is not based on a careful consideration of the case—see Antiphon 5.69–70; D. 19.228; [D.] 58.31.

7 One finds the verb used to express Euphiletus' anger when his wife does not go to look after their child (Lys. 1.12), but this is different from saying that an accusation was brought because of anger.

8 For an analysis of the legal issue in the case, see Harris (2013) 192–196.

9 MacDowell (1990) 292–293 mistakenly thinks that these are cases of self-defense, but see Harris (2008) 113, note 113 with the references there.

> things, men of Athens, but the victim may not be able to describe to someone else even one of these things: the way he stands, the way he looks, his tone of voice, when he strikes to insult, when he acts like an enemy, when he punches, when he strikes him in the face. When men are not used to being insulted, this is what stirs them up, this is what drives them to distraction. No one, men of Athens, could by reporting these actions convey to his audience the terrible effect of outrage in the exact way that it really and truly appears to the victim and those who witness it.

Demosthenes (21.73–76) then contrasts his reaction to those of Euthynus and Euaeon: while they could not control their anger and killed their assailants, Demosthenes was able to restrain himself and was not overcome by his anger. This rhetorical strategy is doubly effective: it allows Demosthenes both to show the judges the emotional impact of Meidias' abuse (it was so terrible it caused other men to commit murder) and to demonstrate his own self-restraint (*sōphrosynē*), his ability to control his anger, which entitles him to their sympathy.[10]

The situation is similar when it comes to pity. In tragedy characters and choruses often say that they feel pity for someone. In Sophocles' *Ajax* (121–123), Odysseus tells Athena that he pities the hero despite his enmity because he has met with disaster. In the same play, Ajax, a character who is hardly sentimental, admits to feeling pity for his wife and son (S. *Aj.* 652–653). After Tecmessa speaks, the chorus asks Ajax to have pity on her as they do (525). In the *Philoctetes* Neoptolemus tells the chorus that he feels pity for Philoctetes (S. *Ph.* 965, 1074). In the *Women of Trachis* (298–300, 312–313) Deianeira says that she feels pity for the women captured by Heracles and especially for Iole, that is, of course, before she learns her identity. The chorus in *Oedipus at Colonus* (254–255, 555–556) several times express their compassion for the Theban exile when they see his miserable condition.

In forensic oratory, the use of pity is similar to the use of anger: speakers say that it is right for others to feel pity for those who have endured misfortune, or that the judges should pity litigants who have been deprived of their rights or that the judges should not feel pity for a criminal who is obviously guilty. Or they criticise an opponent for not showing pity when he should have. As

10 Allen (2000) 159 claims that "The Athenian norms of public agency required that prosecutors speak personally and in tones of anger". Alas, no! Litigants, whether they are accusers or defendants, never describe themselves as angry. As the evidence collected in this chapter shows, quite the opposite.

Konstan has well shown, pity is for the innocent, not for the guilty.[11] But no litigant in court ever says that he feels pity for someone else, even though feeling pity is viewed as the mark of a civilised person (D. 22.57). Supporting speakers never say that they have stepped forward to help them because they felt pity for the accuser or the defendant.[12] For instance, in *Against Neaira*, the supporting speaker Theomnestus describes how Stephanus has won a lawsuit against Apollodoros and then brought a false charge against him but never says that he acts out of pity for his father-in-law. He has come to help him because Apollodoros was wronged ([D.] 59.1–14). The same is true for the supporting speaker who defended Phormio (D. 36.1–3). In general, pity is viewed as a positive emotion (though the misuse of pity can lead to an incorrect verdict—see D. 19.228), but speakers never say that they themselves feel pity.

Closely related to pity are tears. Characters and choruses in plays often say that they are weeping and shedding tears. Antigone in the *Oedipus at Colonus* weeps for her father (S. *OC* 1709–1710). In *Oedipus the King*, Oedipus weeps for the suffering of Thebes (S. *OT* 66). Polynices asks if he should weep for his sisters and father (S. *OC* 1254–1255). The chorus weeps for joy at the return of Orestes in Sophocles' *Electra* (1230–1231). Hyllus weeps at the suffering of his father Heracles (S. *Tr.* 795–796). Antigone weeps at her fate as she is led to the underground chamber (S. *Ant.*802–803). In Aeschylus' *Prometheus Bound*, the Oceanids say that they shed tears for Prometheus (Aesch. *Pr.* 144–145, 399–401). But litigants in Athenian courts tend to keep their eyes dry; no accuser, defendant or supporting speaker admits to shedding tears. In fact, Isaios never uses the words *dakruon* and *dakruein* in the speeches he wrote for his clients. Demosthenes says that his opponents have wept in court or will shed tears, but he always implies that their conduct is a bit excessive and deceitful. In *Against Meidias* Demosthenes (21.186) predicts that the defendant will come into court wailing and accompanied by his children, speaking words of humility and making himself as pitiable as possible (for a similar warning see D. 19.310), but argues that this is no reason to acquit him. In the same speech Demosthenes (21.204) tells the judges that when his opponent attempts to deceive and trick them by weeping and wailing and begging, they should remind him of his crimes. In *Against Boeotus*, the plaintiff Mantitheus tells the court that when the defendant complains the way he has been mistreated and weeps and

11 See Konstan (2000). Cf. Stevens (1944), especially on arguments that the guilty do not deserve pity.

12 On the motivations of supporting speakers, see Rubinstein (2000) 123–172.

wails, they should not trust him because these topics are irrelevant (D. 39.35). In his speech *Against Nicostratus*, Apollodoros warns the judges to beware of those who try to play on their sympathies by bringing orphans and heiresses into court or talk about old age and poverty and food for their mother, wailing (*odyromenoi*) about matters with which they will try to deceive them ([D.] 53.29).[13] In *Against Stephanus* Apollodoros says that if the defendant and his supporters start 'wailing,' the judges should remember that the victim deserves more pity than those who should be punished ([D. 45.88. Cf. D. 54.43). In the speech *Against Pantaenetus*, Nicobulus predicts that his opponent will attempt to deceive them by weeping and wailing shamelessly and without restraint (D. 37.48). In *Against Nausimachus and Xenopeithes* the speaker claims that instead of addressing the issues of the case and the laws, his opponents will wail about being orphans and discuss their earlier effort to recover damages. In this way, they will attempt to deceive the court (D. 38.20). In *Against Ctesiphon* Aeschines (3.207, 210) accuses Demosthenes of weeping more easily than other men laugh and links this to his tendency to commit perjury and poses the rhetorical question: 'What then are all these tears about? What is this shouting? Why are you straining your voice?' (Aeschin. 3.207). In an Athenian court the theatrical expression of emotion arouses suspicions of insincerity. When Aeschines (2.179) introduces his family into court toward the end of his defence against Demosthenes' charges of treason, he does not say that they are weeping or that the sight of them causes him to weep. He uses the language of supplication and entreaty and calls his children pitiable, but does not mention his own tears.

The only way to get tears and wailing to work in one's favour was to place them in the mouths of relatives. In *Against Conon*, the plaintiff Ariston recounts how he was the victim of a brutal assault but never describes his own sense of humiliation. The only emotional reaction he describes is that of his mother and their slaves, who, when they saw his wounds, started to shriek and shout (D. 54.9). In a speech of Isaios (8.22) the speaker recalls how Ciron's widow wept and begged to have the ceremony for her husband conducted in her house. Here too stereotypes of gender permit women to lament, a type of conduct that is not allowed for men.

Another way in which forensic oratory is more emotionally restrained than tragedy is in the description of violence and death. In tragedy, the deaths

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13 For a similar criticism of an opponent's weeping, see D. 36.36. Apollodoros reports that after receiving 300 drachms from him to pay for a trip to find his brother, Nicostratus wept and wailed, but these expressions of grief later turned out to be insincere ([D.] 53.7. Cf. 10).

of victims are often described at length in gruesome detail. We begin with the messenger's description of Heracles' slaughter of his children, which is especially lurid. Heracles shoots an arrow into the heart of one child, who falls backwards, spattering blood on a column. Heracles then brings down his club on the head of the next child "like a forging sledge, smashing all the bones". Finally, he kills his third son and his wife with one arrow—which conjures up quite an image in our imagination (Eur. *HF* 977–1000). In Euripides' *Hippolytus* (1236–1240) the messenger describes to Theseus how his son Hippolytus was entangled in the reins of his chariot and had his head dashed against the rocks, which shredded his flesh, as he shrieked at his panic-stricken horses to stop dragging him along. In Sophocles' *Trachiniai* (779–782) Hyllus recounts to the chorus how Heracles seized Lichas by the foot where the ankle was connected to it, and threw him onto a rock so that his white brains poured out on his hair when his head was shattered. Later in the same play (930–931) the nurse tells the chorus how Deianeira struck herself with a two-edged sword in the side below the liver and *phrenas*.

In Sophocles' *Antigone* (1234–1239) the messenger recounts how Haemon leaned against his sword and drove half its length into his side and, while still alive, clasped Antigone in a 'moist' embrace, panting his last breath and spurting out a sharp jet of blood that stained her white cheek. The contrast between the red blood and the white cheek is both exquisite and shocking, almost reminiscent of passages in Oscar Wilde's *Salome*. In Sophocles *Oedipus the King* (1268–1279) the messenger recounts how Oedipus took the golden pins from Iocasta's clothes and struck his eyes with them. The messenger repeats this detail, adding how his bleeding eyeballs soaked his cheeks, which did not stop dripping. The manuscript continues with two lines about "sluggish drops of gore, but all at once a dark shower of blood came down like hail" (1278–1279). These lines prove to be too much for the editors Lloyd-Jones and Wilson, who prefer to delete them. In Euripides' *Medea* 1167–1202 the messenger lists all the stages in the horrifying death of Creon's daughter:

> But then there was a terrible sight to behold. For her color changed, and with legs trembling she staggered back sidelong, and by falling on the chair barely escaped collapsing on the floor. And one old woman among the slaves, thinking, I suppose, that a frenzy from Pan or one of the other gods had come upon her, raised a festal shout, until she saw white foam coming between her lips and her eyes starting out of their sockets and her skin all pale and bloodless. (…) when the poor woman wakened from her silence, opened her eyes, and gave forth a terrible groan. For she was being attacked by a double pain. The golden circlet about her head shot

> forth a terrible stream of consuming fire, and the fine-spun gown, gift of your sons, was eating into the wretched woman's white flesh. All aflame she leapt from the chair and fled, tossing her hair this way and that, trying to shake off the diadem. But the gold crown held its fastenings firmly, and when she shook her hair, the fire merely blazed twice as high. She fell to the floor, overwhelmed by disaster, barely recognisable to any but her father. Her eyes no longer kept their wonted form nor did her shapely face. From the top of her head blood dropped, mingled with fire, and her flesh dropped from her bones like resin from a pine torch, torn by the unseen jaws of the poison, a dreadful sight to behold.
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> transl. KOVACS

And as if these were not enough, there is that masterpiece of blood and gore, the dismemberment of Pentheus in Euripides' *Bacchae* (1125–1142), the ancient equivalent of the *Texas Chain-Saw Massacre*. Pentheus' mother starts by grabbing his left arm and wrenching it out by placing her foot against his ribs. On the other side, Ino rips his flesh out, then Autonoe and the whole troop of Bacchants. His screams mingle with their triumphant shouts. One woman carries an arm, another a foot still wearing a sandal. His ribs are torn apart; the women, their hands bloody, toss Pentheus' flesh like a ball. As the Bacchants dance on the mountain-side, Agave carries Pentheus' head impaled on a thyrsus. What is especially striking about these messenger speeches is the anatomical precision.

Anatomical precision is not just found in scenes of violence in tragedy, but also in the description of emotions. The late Jacqueline de Romilly has observed that when describing emotions, Aeschylus often links them with parts of the body such as the heart (καρδία: *Supp.* 785; *Pers.* 161; *Sept.* 288, 834; *Pr.* 881; *Ag.* 977, 1028; *Ch.* 1025. κέαρ: *Supp.* 784; *Th.* 287; *Ag.* 997. ἦτορ: 992), the midriff or heart (φρήν or φρένες: *Pers.* 115, 165; *Pr.* 881; *Ag.* 995; 1034); the breast (στῆθος *Th.* 563); and the lobe of the liver (λοβός *Eum.* 158), and the inner organs of the chest and belly (σπλάγχνα: *Ag.* 994).[14]

By contrast, litigants in court are quite restrained in their descriptions of death and violence. Nor do they link emotions with parts of the body. In Antiphon's *On the Stepmother* (19), the son who brings the charge stresses the defendant's intentions and plotting but has little to say about the deaths of his father and his friend. He could have described how his father suffered during the time before his death, but simply says that he died after nineteen

14 de Romilly (1958/2011) 42.

days. When recounting the story of his brother's execution by the Thirty, Lysias (12.17–18) merely says that he received the order to drink hemlock and was then brought home dead. There is no mention of his physical or emotional pain or of the reaction of his relatives. The sounds of mourning, so familiar in Greek tragedy, are absent from court oratory. The emphasis is on the crimes of the Thirty in putting Polemarchus to death without a trial and in denying him a proper burial. That is not to deny that the details about the humble funeral were designed to arouse the judges' pity, but the description is quite restrained by comparison with tragedy and does not distract the court from the legal issues. On the contrary, the judges are encouraged to feel pity because Polemarchus' legal rights have been violated.

In *Against Agoratus*, the speaker is also restrained (Lys. 13.39–43). The speaker says how the men condemned to death summoned their sisters, wives, or mothers and describes the cloak worn by Dionysodorus' wife. Here again the emphasis is on matters relevant to the legal issue in the speech: first, the fact that Agoratus is responsible for the death of Dionysodorus, and, second, the solemn charge to his relatives and friends to bring a charge against Agoratus, which serves as legal justification for the prosecution. From an emotional perspective, the narrative is quite spare. The attempt to arouse pity does not clash with the presentation of the legal case.

The only passage I have found in which a litigant gives physical details of a murder is Aeschines' allusion to the death of Nicodemus (Aeschin. 1.172), but this is notable for its brevity. The same is true for Antiphon's speeches *On the Death of Herodes* and *On the Chorister* and Lysias' *On the Murder of Eratosthenes*. In these speeches, however, we would not expect the litigants to dwell on the suffering of the victims because they are defendants who claim that they are innocent and do not therefore wish to dwell on the deaths of the victims. When litigants mention scenes of violence, they rarely go into detail about wounds or bruises. The two speeches of Lysias (3 and 4) written for cases involving brawls contain little description of bruises or wounds. The only notable exception is the account of the wounds suffered by Ariston in Demosthenes' *Against Conon* (8–12), but in this case the details are relevant to the legal charge of assault and battery (*aikeia*) brought against the defendant. In fact, court speeches tend to avoid terms pertaining to the body such as *pous* (foot), *sarx* (flesh), *osteon* (bone), *gnathos* (jaw), *haima* (blood), *noton* (back), *hidros* (sweat), *ophthalmos* (eye—*omma* tends to be used in tragedy), *gastēr* (stomach), which are often found in the messenger speeches of tragedy speeches discussed above. And in a similar matter words relating to physical pain like the nouns *algos* and *odynē* and the verb *algunō*, which occur regularly in tragedy, are rarely, if ever, found in forensic oratory. In the recent books of

Goldhill, Rutherford and Budelmann on tragic style, I can find no discussion of this topic.[15]

There is one passage in Demosthenes' *On the False Embassy* (D. 19.197–198), which would appear to violate this rule. In the speech Demosthenes accuses Aeschines of betraying the city's trust during his embassies to Philip regarding the Peace of Philocrates concluded in 346. Demosthenes recounts Aeschines' behaviour during a symposium while in Macedon that year.

> When they were invited to the house of Xenophron, the son of Phaidimus, who was one of the Thirty, they went, but I did not go. After they got to drinking, he brought in an Olynthian woman, good-looking on the one hand, yet also free born and modest, as her conduct revealed. At first, they apparently forced her only to drink in a leisurely way and to eat, as Iatrocles related me the next day. But as the event went on and warmed up, they ordered her to sit down and also to sing something. The slave woman got upset; she did not wish to sit down and did not know how to sing. This man here and Phrynon declared that she was arrogant and that it was unbearable for one of the god-forsaken, damned Olynthians, and a captive taken in war at that, to give herself airs, and shouted 'Call the slave-boy in' and 'let him bring a whip.' A slave came with a strap; they were drinking, I think, and minor things were getting them stirred up. When she protested and burst into tears, the slave tore off her short *chiton* and thrashed her on the back many times. The woman was out of her mind with the suffering and this treatment and jumped up and fell at the knees of Iatrocles, pushing over the table. If that man had not taken her away, she would have been killed from their drunken violence. The drunken abuse of this scumbag here is shocking.

The vocabulary in this passage is unusual not only in Athenian forensic oratory in general, but also in Demosthenes' speeches. This is the only passage in the Demosthenic corpus where we find the words *noton* ('back'), *himas* ('whip'), *rhytēr* ('leather bridle'), *symposion* and *xainō* (which I have translated 'thrash').[16] The last term is interesting; it is used to describe carding wool and

15 Goldhill (2012), Rutherford (2012), Budelmann (2000). Hall (2006) 382–383 does not observe the differences between the narrative style of tragedy and that of forensic oratory.

16 For example, the words *noton*, *symposion*, *himas* and *xainō* do not occur in Aeschines. Aeschines only uses the term *rhytēr* when referring to Demosthenes' accusation about the Olynthian woman.

evokes an image of a sharp object cutting into soft material. Demosthenes could have used a more neutral term to describe the whipping, but he chose one that conveyed the image of the sharp whip lacerating the woman's flesh. The word *rhytēr* can be used to denote a bridle for a horse, that is, an object normally used to restrain an animal, which would have been humiliating for a free person. The word *chitōniskos* is also rare in the Demosthenic corpus. Normally a woman wore a *chitōn* as an undergarment beneath a heavier garment such as *himation* or a *peplos*. The short *chitōn* or *chitōniskos* is associated with slaves (see D. 36.14). In D. 21.216 Demosthenes describes himself as almost naked when his *himation* is pulled off, and he is only wearing his *chitoniskos*. The fact that the woman is wearing only the *chitōniskos* emphasises both her status as a slave and her vulnerability, pathetic details designed to stir emotions.

In his reply as defendant to Demosthenes' accusation, Aeschines (2.157) corrects two details—first, he says that Xenodocus, one of Philip's Macedonian *hetairoi* was their host, not a son of one of the Thirty. Second, he says that Xenodocus was providing a feast (εἱστία) not a symposium. The verb *hestiaō* is a general term used to denote hosting guests. It is frequently used for more formal occasions such as the sacrifice and *panēgyris* Philip held to celebrate his victory over Olynthus in 348, which Demosthenes alludes to the previous section. This was the kind of event that respectable women could attend and was in contrast to the symposium, which respectable women did not attend (Hdt. 5.18–21; Isae. 3.14). Aeschines then loosely paraphrases Demosthenes' allegations:

> After this preface, he strained that shrill and ungodly voice of his, saying how terrible it was for a man who takes the parts of Carion or Xanthias to be so noble and magnanimous when I, Aeschines, a man who advises the greatest city and warns the Ten Thousand in Arcadia, did not restrain his insolence, but beside myself and hot with drink, when Xenodocus, one of Philip's companions, was hosting us, I dragged a captive woman by the hair, took a whip and flogged her.

Aeschines repeats some of the words used by Demosthenes but adds the detail about dragging the woman by the hair.[17] What is interesting is that Aeschines (2.158) does not criticise Demosthenes' accusation only for being false (he charges that Aristophanes collaborates in his lies—*syngkatepseusato*),

17 It is interesting to note that in the only other passage in which he uses the Greek word for hair (*thrix*) Aeschines (3.130) refers to Demosthenes' outrageous threats and compares him to Cleophon, who was also known for his outrageous behavior.

but also for being shameful (*aischrais*), in other words, that his opponent's language exceeded the bounds of decorum. He also makes fun of his emotional delivery by recalling how Demosthenes 'strained' his voice, another breach of decorum.[18] Apparently, Aeschines was not the only one to find Demosthenes' language offensive. In the opening section of his speech, Aeschines (2.4) says that he was beside himself and was very hurt when Demosthenes accused him of *hybris*, which in this context probably implies sexual violence and drunken insolence toward a free woman and an Olynthian by birth.[19] But Aeschines then rejoiced when the judges 'rejected' (*exeballete*) this charge, which apparently means that they shouted at this breach of decorum and did not allow him to continue with this accusation.[20] So this passage is the exception that proves the rule: when Demosthenes employed language that was too explicit and emotionally inflammatory, he provoked a sharp reaction from the judges who issued a firm reprimand for breaking the informal protocols that governed the conduct of litigants. Finally, it is worth noting that this is one of the few places in forensic oratory in which a litigant describes his own emotions: Aeschines confesses that when Demosthenes made this charge, he was afraid and disturbed, beside himself and took it hard, then felt joy. But he is careful to stress the fact that the judges shared his reaction.[21]

Even though we have found that emotions had a role to play in Athenian courts, litigants did not speak about their own feelings in the way that tragic characters do. There are several reasons for this. First, there is the Judicial Oath, which all the judges swore and bound them to vote in accordance with the laws and only about the legal charges in the indictment.[22] For their part litigants also swore to keep to the point, that is, to direct their speeches to the legal charges in the indictment. Ideally this meant that the judges would pay no attention to

18 Cf. Aeschin. 3.210 for another criticism of Demosthenes for raising his voice.

19 For *hybris* as sexual violence, see Harris (2006) 297–332 *passim*. A referee suggests that the written version of forensic speeches may have been less emotional than the oral version but offers no evidence to support this view. On the other hand, if the written versions tended to be less emotionally flamboyant, we would have expected Demosthenes to have omitted these physical details in his account of the assault on the Olynthian woman. On the revision of speeches see Harris (1995) 9–11 with notes 6 and 7. The views about the revision of speeches in Worthington (1991) rely on improbable ideas about ring-composition and should be consulted with great caution.

20 For judges shouting at litigants in court, see Bers (1985), who does not discuss this passage.

21 For the need to feel the same emotions as one's fellow citizens see D. 18.291.

22 On the Judicial Oath see Harris (2013) 101–137, 353–357.

the delivery of a speech but concentrate only on the legal issues. According to Aeschines (1.92), this was the way the Areopagus decided cases:

> Use as your example the Council of the Areopagus, the most scrupulous body in the city. I myself have up to now seen many men convicted in this court even though they spoke very eloquently and provided witnesses. Up to now I have also seen men who spoke very badly and had no witnesses to testify win their cases.

Aeschines does not say that the regular courts judged cases in a different way; on the contrary, the Areopagus set an example the regular courts were supposed to follow.[23] In a forthcoming essay I have collected all the passages in which litigants explain verdicts made by Athenian courts. In not one case does a litigant state that either he or an opponent won a case only because of the quality of the performance or that he or an opponent lost a case because a speech was poorly delivered.

Second, an emotionally overwrought performance would undermine a litigant's credibility. As we saw at the beginning, Demosthenes criticises Aeschines for using tragic expressions and implies that this is a sign of insincerity. Unlike the actor who was expected to deliver his lines after memorising a written text, the litigant in court had to appear to speak spontaneously and to avoid the impression that he had memorised a text. In *Against Meidias* Demosthenes (21.191) anticipates such an objection from his opponent, who he predicts will charge him with preparing his speech in advance. He attempts to turn this charge against Meidias by stating that it was he whose crimes in effect dictated his speech for him.[24] And too much emphasis on delivery was considered a fault. Aristotle (*Rh.* 3.1.5.1403b) considers any discussion of delivery 'vulgar,' and Hyperides was praised for not paying any attention to it and for only narrating the facts in a way that did not irritate the judges ([Plu.] *Mor.* 850ab).[25]

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23 *Pace* Lanni (2006) 75–118 who claims that the popular courts had a different standard of relevance. See Harris (2009/10) 327–328.

24 For the importance of appearing to speak spontaneously, see Alcidamas *On the Sophists* 28. One is reminded of a saying of George Burns: "Sincerity—if you can fake that, you've got it made".

25 Hall (2006) 369 draws attention to a passage in the *Lives of the Ten Orators* ([Plut.] *Mor.* 845b, which she incorrectly cites as 845a) in which Demosthenes is alleged to have said that the three most important things in oratory are delivery, delivery, delivery, but fails to note that the story is told about Demosthenes' performance in the Assembly, not in the law courts. Hall 2006: 368 claims that "the distinction between the three categories of

Third, a good Athenian citizen was expected to be law-abiding, and obeying the law was associated with *sōphrosynē*, the virtue of keeping one's emotions and desires under control (Aeschin. 3.2). Violating the law was associated with *hybris*, the tendency to be overpowered by appetites and emotions and to lack self-control.[26] To gain the trust of the court, therefore, a litigant had to display self-control, and this meant avoiding any language that was too emotional. In the *Rhetoric*, in fact, Aristotle stresses the need for the speaker to create a good impression of his *ēthos*, his fine character, which is a key method of establishing his credibility in front of the judges. This was how one could 'perform' one's respect for the law.

That is not to say that proper delivery did not matter. When the supporting speaker in *Against Phormio* (D. 36.1) explains his role at the trial, he says that Phormio was inexperienced at speaking, which implies that he was incapable of delivering his speech and might have damaged his case had he spoken on his own behalf. But the litigant had to deliver his speech in such a way as to avoid giving the impression that he was attempting to distract the judges from the legal issue. Any effort to act in a way that was perceived as too tragic or too emotional would have inevitably aroused the suspicions of the judges that the speaker was trying to divert them from their duty to decide only about the question, did the defendant violate the law under which the accusation was brought? Sensational details, overwrought descriptions and tragic language might therefore be counter-productive.

Quintilian (*Inst.* 11.3.182–183) draws a sharp contrast between the style of delivery appropriate for an actor and that suitable for an orator:

> Here the actor will introduce pauses for hesitation, inflections of the voice, various hand gestures, and different movements of the head. Oratory has a different flavour: it does not wish to be too highly spiced, because it is a real activity, not an imitation. There is therefore every reason to object to a delivery that pulls faces, irritates by its gesticulations, or jumps from one tone of voice to another.
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> transl. D.A. RUSSELL

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rhetoric is frequently blurred" but see Ar. *Rh.* 3.12.1.1413b, who insists on the differences between the two genres. When Cleon attempted to use the language of forensic oratory in the Assembly, he was sharply criticised by Diodotus. See Harris (2013c).

26 On *hybris* as lack of self-control, see MacDowell (1976). In his analysis of *hybris*, Fisher tends to place too much emphasis on the intent to dishonor. See the criticisms of MacDowell (1990) 19–20 and Cairns (1996).

In fact, Quintilian gives a long list of do's and don't's when it comes to delivery and often contrasts what it appropriate for the actor with what is suitable for the orator. In the *Rhetoric* (3.2.1404b) Aristotle also stresses the differences between poetry and oratory in matters of style:

> In poetry many things make this so, and it is appropriate there (i.e. an elevated style) because the subjects described are out of the ordinary. But in prose such a style is less appropriate because the subject is less elevated. Even in poetry if a slave or a very young person speaks elegantly or about unimportant subjects, it would appear rather inappropriate. For even here the right style requires restraint or emphasis. For this reason one must avoid the appearance of doing this and not appear to speak artificially instead of naturally. The latter style is persuasive, the former the opposite because men become suspicious as if someone were plotting against them as they are of wines that are mixed.

Here the work of Aristotle the theorist joins up with the practice of the orators in court. A poetic style, one that was tragic, emotionally exaggerated, and artificial would make the judges suspicious and lack conviction. The Athenians took the boundaries between genres very seriously and expected then to be respected. There is plenty of art in forensic oratory, but it is not the art of the tragic stage.

Appendix 1: Anger in Demosthenes' Forensic Speeches

18.18	You were angry with the Thebans for the way they acted after Leuctra.
18.20	Because you were angry with the Greeks, you accepted Philip's proposal to make peace.
19.35	You (the Athenians) were astounded at Philip's arrival and angry with these men.
19.265	When some men envied those taking bribes instead of getting angry and punishing them.
19.302	It is reasonable for you (the judges) to be angry with traitors and you should be angry with no one more than Aeschines.
19.45	I said if what they say happens, praise honor and crown them, but if the opposite happens, be angry with them.
19.133	You the Athenians were angry with Philip.
20.102	You, Leptines, should not be angry with me because I am not going to disparage you.

20.119	You, the judges should be angry if anyone says our ancestors did not reward benefactors.
21.2	The Assembly was angry at the injustices I suffered at the hands of Meidias.
21.36	Meidias thinks you will be less angry with him if you hear about others who have been attacked as I was.
21.46	Outrage (*hybris*) deserves your (i.e., the judges') anger.
21.123	You ought to be as angry as I am when you see the rich oppressing the poor.
21.183	Do not make your anger plain when people move illegal decrees and show your gentle side when they do something illegal.
21.226	You were angry at Meidias when you voted against him in the Assembly.
21.222	Will you (the judges) show your anger at Meidias after acquitting him?
22.39	Show that you (the judges) are angry with those who deceive you.
23.168	You (the Athenians) were angry when you removed Cephisodotus from office.
23.184	You should be angry with generals and politicians deceiving you.
24.90	Attempt to rouse anger of judges.
24.143	If you, the judges, get angry, criminals will be less abusive.
24.175	If you react mildly to actions that make you angry, you will appear to have made your decision in anger (similar in following section).
24.218	Because of all I have said you should be angry and punish the defendant.
33.38	Apaturius should have been angry with the witness who destroyed the agreement.
36.28	Apollodoros cannot think you (the judges) will be angry because Phormio married his mother.
40.5	You, the judges, should be angry with my opponent.
40.29	You cannot say that my father acknowledged him when young, then treated him without respect later because he was angry with his mother.
43.11	I was not angry at what happened.
47.79	If you were angry with me for taking Theophemus' property, you should be angry with him for taking mine.
48.6	I was angry and indignant at my opponent's lies but did not consider it the right time to be angry.

57.49	The entire deme was angry at those who illegally forced their way in.
57.63	Many became angry because of my administration as demarch (the impression is that the anger was not justified).
58.31	The judges were angry with my father when they convicted him.
58.32	My opponent saw that the judges were angry.

Appendix 2: Pity in Demosthenes' Forensic Speeches

18.41	Aeschines is overwrought with pity for the Thebans even though he holds land in Boeotia from Philip.
19.228	Judges in court are often distracted by pity, envy, anger and other such things.
19.257	Aeschines disenfranchised another citizen so that he would obtain no mercy or pity himself.
19.283	Aeschines asked the judges not to show pity for Timarchus' mother.
19.309	You felt pity for those captured at Olynthus, but Aeschines did not.
19.310	The children captured at Olynthus deserve your pity more than criminals here.
21.99	It is right to pity the victims of injustice, which they cannot endure, but not those who have done injustice. Meidias showed no pity for Strato and thus deserves no pity. Meidias will ask you to pity his children, but he does not deserve pity.
21.100	No one who feels no pity for others has a right to pity himself.
21.101, 185	A man who pities others deserves to be pitied. A man who is violent and shows no pity deserves to be repaid in the same coin.
21.182	You did not take pity on Smicrus and Sciton when they were guilty, or on their children, or on their relatives or on their friends.
21.183	Do not fail to show pity for a poor man who is convicted and give sympathy to a rich defendant. Treat all the same.
21.195	Meidias will ask the judges to have pity on his children and himself, but he does not deserve it after the way he has treated others.
21.196	It would be remarkable if you (Meidias) received loathing for the way you live and pity for your hypocrisy. You do not deserve pity, but loathing and anger.
22.57	In our law are pity, forgiveness, all the qualities men should have.

24.171	Pitying the weak and resisting the arrogance of the strong and powerful is the opposite of treating the many savagely and flattering the powerful.
24.196	You, Timocrates, cannot claim that you felt pity for unfortunate men. (…) You cannot say that you pity unfortunate men because of your humane character.
24.197	On the one hand, you (Timocrates) showed pity for Androtion, Glaucetes, and Melanopus, but none for those whose houses you invaded. The conduct of Timocrates should provoke your hatred, not your pity. You, Timocrates, do not take pity on them because you are humane.
24.198	You have more reason to pity citizens who are worn down by taxes.
24.201	You, Timocrates, do not pity your father even though you claim that you pity others.
27.53	Aphobus will try to make me look rich so that you (judges) will feel less pity for me.
27.57	My opponents will tell their story to reduce your pity for me.
27.65	Even for those who are guilty, you take pity on their wives and children. My opponents did not pity my sister.
27.67	If you do not take pity on me, I will lose my rights.
27.68	It is your duty to show pity to those suffering undeserved misfortune, not those who rob others.
28.16	Aphobus will ask for your pity (implying that he does not deserve it).
28.18	Who would not feel anger at him and pity for me when he has added my property to the estate of more than ten talents he inherited.
28.20	You judges, please pity us because our relatives have not pitied us.
36.59	Do not show Phormio pity at a time when he does not need it but right now.
57.45	Free men compelled to do the work of slaves should be pitied, not ruined.
58.69	Take pity on those in our family who died for their country.

CHAPTER 14

Roman Judges and Their Participation in the "Theatre of Justice"

Jon Hall

Introduction

Several incidents recorded by Cicero, Plutarch and Valerius Maximus depict Roman judges of the Late Republic engaging in remarkably assertive actions during the course of judicial proceedings. These displays of initiative contrast sharply with the essentially passive role expected of judges in the courts of many modern Westernised societies.[1] They thus raise several interesting issues. From a cultural perspective, we may ask why this scope for action prevailed in the Roman courts. What was it about the Roman way of organising these trials that facilitated such behaviour? And, from the perspective of oratorical technique, we may wonder how far the behaviour of Roman judges shaped the strategies of persuasion deployed by advocates such as Cicero. To what extent, for example, were aspects of his delivery—especially the more theatrical elements—shaped by the judges' freedom to engage openly with the events played out on the judicial stage?[2]

Unfortunately, we have relatively little information about *specific* judges who participated in the trials of the Late Republic. Nicolet notes, for example, that we know the identity of only 28 equestrian judges from the final half-century of this period;[3] and we are only a little better informed regarding senatorial

1 On the general passivity of modern judges, see Alschuler and Deiss (1994) 901–911; Anand (2005) 408 and 432; Larsen (2010) 966. All references to ancient sources in the following discussion are from works by Cicero, unless stated otherwise.

2 On Cicero's use of "judicial theatre", see Hall (2014). For the purposes of definition, the term can include any non-verbal element of Cicero's performances. In practice, however, several features were deployed with some regularity: the use in court of a defendant's relatives as props; supplicatory gestures; tears; and the donning of *sordes* (dirtied clothes) by different parties involved in proceedings. Note that ancient rhetorical discussions of oratorical delivery rarely mention such elements of performance.

3 See Nicolet (1974) 1087–1089 for the list of individuals. He describes the number as "étonnamment peu" (p. 1090).

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judges.[4] Given that the annual *album* of potential judges drawn up at the start of each year may perhaps at times have included some nine hundred individuals, the information at our disposal is thus disappointingly sparse.[5] This is perhaps one reason why modern scholarship has tended to focus instead on the political influence that judges could wield *as a collective group*.[6] Nevertheless, even though the available evidence is largely anecdotal in nature and therefore not necessarily representative of general practice, I hope to show that the incidents portrayed can still tell us something useful about the dynamics of Roman trials.

1 Judges as Actors

Let us begin by examining several notable incidents from trials during the Late Republic. In a letter written to Atticus in 61 B.C., Cicero describes the concerted action taken by a number of judges at the Bona Dea trial when he stepped up to give evidence that was likely to prove harmful to Clodius' cause (*Att.* 1.16.4):

> me vero teste producto credo te ex acclamatione Clodi advocatorum audisse quae consurrectio iudicum facta sit, ut me circumsteterint, ut aperta iugula sua pro meo capite P. Clodio ostentarint.

4 See e.g. McDermott (1977) and Alexander (1990) 88–90 (no. 177) on the thirteen (possibly fourteen) senatorial judges known to have served at the trial of Verres in 70 B.C. We also know the identities of some nineteen judges who took part in the trial of Oppianicus in 74 B.C.; see Alexander (1990) 75–76 (no. 149). See also Alexander (1990) 228–229 for a complete list of known judges between 149 and 50 B.C.

5 On the annual *album* after the *lex Aurelia* of 70 B.C., see Greenidge (1901) 445–448; Brunt (1988) 210–216; 237; Lintott (2004) 74–75. Our main evidence for the number of judges enrolled is *Fam.* 8.8.5, where reference is made to three hundred senators. The question remains, however, whether we can assume the same number of equestrians and *tribuni aerarii* on the list as well. There would of course have been a degree of continuity in these names from year to year; but military service overseas, election to public office and general mortality rates would have resulted in frequent changes as well.

6 See e.g. Gruen (1968); Brunt (1988) 194–239. At certain times the role of judge was restricted solely to senators, at others solely to equestrians. During most of Cicero's career as an advocate, however, juries consisted of a combination of senators, equestrians and *tribuni aerarii*. On these changes, see most conveniently Greenidge (1901) 415–428; Rotondi (1912) 301, 308, 313–314, 325, 369; Balsdon (1938); Jones (1972) 45–90; Cloud (1994); Harries (2007) 59–83.

> Indeed, when I was called forward as a witness, I imagine you yourself heard from the shouting of Clodius' supporters how the judges rose together, positioned themselves around me, and offered their bare throats to Clodius in exchange for my life.[7]

The anecdote is designed of course to reflect positively on Cicero, although certain details remain unclear. Did this *consurrectio*, for example, involve a majority of the judges—or just three or four? Did they actually make the theatrical gesture of offering their own throats (*aperta iugula sua ... ostentarint*), or is Cicero's phrasing essentially metaphorical? Finally, is there any truth to Cicero's claim that the judges' vociferous support so frustrated the efforts of Clodius and his team that they retired in defeat?[8] These questions are important if we want to establish the scope of the judges' actions accurately. But even a highly sceptical reading of the account would have to acknowledge that some kind of noisy skirmish took place during these proceedings, and that at least several members of the jury rose from their seats in an attempt to protect Cicero from intimidation. Such a scene is difficult to imagine in a modern court. And if we accept Cicero's description in every detail (as does one important modern discussion), the picture becomes all the more remarkable.[9]

This was not the only assertive action taken by a judge at this trial. Cassius Dio claims that the judge Lentulus Spinther (cos. 57) voted for Clodius' conviction (39.6.2: καὶ τὴν μοιχείαν αὐτοῦ δικάζων κατεγνώκει). At first glance, the detail seems unremarkable enough. Yet it is worth asking how Dio (and his source) came across this information. Given Spinther's close association with Cicero, particularly in the following years, it is not impossible perhaps that the detail was included in one of the orator's writings now lost.[10] But a more direct source is no less likely, as W.J. Tatum has suggested: people knew about Spinther's deci-

7 On the Bona Dea trial, see Alexander (1990) 116–117. The case was tried before a special tribunal; on the charges, see Greenidge (1901) 386–389; Rotondi (1912) 385; Moreau (1982) 83–89; Tatum (1999) 71–80.

8 See *Att.* 1.16.4–5: *itaque iudicum vocibus ... fractus reus et una patroni omnes conciderunt.*

9 See Moreau (1982) 203: "Les juges se levèrent alors, entourèrent le témoin, et manifestèrent théâtralement leur résolution de protéger sa vie au prix de la leur". For an attempt by members of the public to intimidate Pompey when he was speaking as a witness at the trial of Milo in 56 (conducted in front of the people), see *Fam.* 1.5b.1: [*Pompeius*] *clamore convicioque iactatus est*; *Q. Fr.* 2.3.2: *convicio et maledictis impediretur*. Cf. Plut. *Pomp.* 48.7; Dio 39.18–19.

10 Note, for example, Cicero's correspondence with Spinther, some of which survives (*Fam.* 1.1–9).

sion because the man openly displayed his ballot to those around him as he cast his vote.[11] In doing so, he would certainly have been acting against the spirit of the *leges tabellariae* that permitted judges to keep their votes secret.[12] But Spinther was himself engaged in a bitter feud with Clodius, and Dio explicitly associates Spinther's vote with this enmity.[13] In this trial, then, which (as we have seen) was characterised by strong emotion and aggressive public posturing, Spinther presumably discerned an excellent opportunity to strike a highly visible blow against Clodius. In this case the very act of voting was turned by a judge into a piece of public self-assertion—for private political ends.

It is true that this trial can be regarded as something of an exception. Not only did it take place before a special tribunal; the threat posed by Clodius' supporters was also perceived to be so disruptive that the judges collectively asked the senate to supply them with a bodyguard on the following days.[14] The senate concurred and the magistrates were instructed to take the necessary steps to protect the judges' safety.[15] The trial, then, was conducted under peculiarly fraught conditions.[16] Nevertheless, the assertiveness of (some of) the judges

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11 See Tatum (1999) 81: "P. Lentulus Spinther … sat as a judge and, with an ostentatious flourish, voted for condemnation".

12 The *Lex Cassia* of 137 B.C. introduced secret ballots for trials before the people (*de populi iudiciis*); see *Brut.* 97; 106; *Leg.* 3.35; *Lael.* 41; *Sest.* 103; Asc. *Corn.* 78C; Ross Taylor (1966) 34–37. Gaius Gracchus' *lex repetundarum* fifteen years or so later seems to have extended the principle. See *lex rep.* 44; and 52: *lit{i}⟨t⟩eram digiteis opertam … coicito*. Text at Lintott (1992) 98 and 100. Cf. Lintott (1992) 131: "The requirement that judges should not ascertain the voting intentions of their colleagues is likely to have been an innovation, although one consistent with the secrecy of the vote itself (line 52) and with the recent trend towards secrecy in voting in assemblies". See also Rotondi (1912) 297, 302, 324–325.

13 Dio 39.6.2: ἐξ ἰδίας ἔχθρας. Cf. Moreau (1982) 145–147. Gruen (1974) 274 further links this feud with the presence on the prosecution of three Lentuli. But note the caution of Moreau (1982) 135.

14 Cicero claims that there was only one dissenter (*Att.* 1.16.5): *clamare praeclari Ariopagitae se non esse venturos nisi praesidio constituto. refertur ad consilium. una sola sententia praesidium non desideravit.* Cf. Moreau (1982) 208.

15 *Att.* 1.16.5: *defertur res ad senatum. gravissime ornatissimeque decernitur. laudantur iudices, datur negotium magistratibus. responsurum hominem nemo arbitrabatur.* Cf. the garbled account in Plut. *Cic.* 29.5. There was a precedent for this action. The disruption at the trial of Manilius in 65 B.C. led to a bodyguard being appointed by the consuls; Asc. *Corn.* 60C; Lewis (2006) 265–266; Alexander (1990) 105–106 (no. 210).

16 See also the disruption at the trial of Vatinius in 58 B.C., where the judges' benches were supposedly scattered and the voting-urns knocked over; *Vat.* 34; *Sest.* 135; Alexander (1990) 125–126 (no. 255). Cf. too Asc. *Mil.* 46C for the suggestion that a threatening public crowd could exert an influence on the judges' voting.

in such circumstances is not unique. A similar incident took place during the trial of Cicero's former enemy Gabinius in October 54 B.C.[17] In a letter to his brother Quintus, Cicero describes the trial's climactic voting procedure (*Q. Fr.* 3.4.1):

> de iudicibus duo praetorii sederunt, Domitius Calvinus (is aperte absolvit ut omnes viderent) et Cato (is diribitis tabellis de circulo se subduxit et Pompeio primus nuntiavit).

> As for the jury, two men of praetorian rank sat on it, Domitius Calvinus and [C.] Cato. The former openly voted for acquittal, for all to see. The latter slipped away from the crowd when the votes had been counted and was first to announce the result to Pompey.[18]

Like Lentulus Spinther at the Bona Dea trial, Domitius Calvinus here evidently made something of a show when casting his vote. One of his aims was probably to advertise his allegiance to Pompey, who (as Cicero notes) had been working hard to engineer Gabinius' acquittal.[19] By doing so, Calvinus risked provoking disapproval from men such as Cicero; but presumably this counted for little if he could secure for himself Pompey's protection and favour.[20]

A second, more devious aim (one not incompatible with the first) may have been to try to influence the votes of those casting their ballots after him. The potential for such influence is suggested by Cicero's discussion of the trial of Oppianicus in 74 B.C., when a temporary change in procedure allowed the option of an open ballot.[21] Cicero depicts judges in these circumstances taking into account the ballots of those who voted before them as they formulated their own decision.[22] To be sure, Cicero's account here is self-serving, and

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17 See Alexander (1990) 145 (no. 296).

18 On the identity of this Cato, see Shackleton Bailey (1980) 215–216.

19 See *Q. Fr.* 3.4.1. Pompey's stake in the trial is also indicated by C. Cato's urgent announcement to him of Gabinius' acquittal. Cf. *Q. Fr.* 3.7.1.

20 Contrast the pose of Cato the Younger, who seems to have made a point of not letting his contemporaries know how he voted at the trial of Milo in 52, even after proceedings were concluded (Asc. *Mil.* 54C: *scire tamen nemo umquam potuit utram sententiam tulisset*). Velleius Paterculus, however, reports the matter differently (2.47.5). Cf. Fehrle (1983) 212–213.

21 On the (probably Sullan) short-lived modification reported at *Clu.* 75 (*cum sententias Oppianicus, quae tum erat potestas, palam ferri velle dixisset*), see Greenidge (1901) 442; Lintott (1992) 131.

22 Following the casting of the first three votes, for example, Cicero claims (*Clu.* 76): *hic tum*

the thought-processes that he attributes to the judges are presumably sheer invention; but his depiction of the judges' general consideration of the previous votes probably seemed plausible enough to his audience. Moreover, Cicero elsewhere notes that in the *comitia centuriata* the vote of the group selected by lot to cast their ballots first exerted a strong influence on the ensuing votes.[23] This influence was based in part on the superstitious significance attached by Romans to the process of sortition;[24] but their more general respect for authority and the established social hierarchy may also have been a contributing factor.[25]

Any such influence would have depended on Calvinus voting early in proceedings. Unfortunately, it is not clear whether or not judges at this time cast their votes in a specified order. Certainly, in accordance with the *lex Fufia* of 59 B.C., they would have placed their ballot into one of three urns, depending on the social classification (*ordo*) to which they belonged (senator, equestrian, or that of *tribuni aerarii*).[26] But how the votes were cast within these groups is uncertain.[27] Perhaps there was an inherent expectation of voting according to rank.[28] If so, Calvinus as a praetorian would have been among the first

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iniectus est hominibus scrupulus et quaedam dubitatio quidnam esset actum. ("At this point, an uneasiness arose among the folk there and a sort of uncertainty about what had taken place".) He then goes on to assign specific motives and intentions to the judges who voted afterwards in an attempt to explain the final result of the ballot. Cf. Greenidge (1901) 442: "But open voting had the disadvantage of giving undue weight to the verdict of those who gave their opinions first". The assertion of Velleius (2.47.5) regarding M. Cato's vote at the trial of Milo likewise assumes that one judge's vote, if revealed to others, could influence the votes of those casting their ballots later (but see also n. 20).

23 See *Planc.* 49: *una centuria praerogativa tantum habet auctoritatis ut nemo umquam prior eam tulerit quin renuntiatus sit aut eis ipsis comitiis consul aut certe in illum annum.* Also Plut. *Cat. Min.* 42.3.

24 On the influence of sortition, see Ross Taylor (1966) 91: "it also influenced later votes because of the Roman's feeling that the lot indicated the will of heaven". Cf. Ross Taylor (1966) 111.

25 See Yakobson (1995) 435; Jehne (2010) 24–29.

26 See Greenidge (1901) 450; Rotondi (1912) 399; MacDonald (1957). On the reporting of votes by *ordo*, see e.g. Asc. *Mil.* 53C on the voting at the trial of Munatius Plancus Bursa: for conviction, 16, 13, 13; for acquittal, 6, 4, 3. Also *Q. Fr.* 2.16.3; *Fam.* 8.8.3; Dio 38.8.

27 No specific provision is included in the *lex repetundarum*, apart from a reference to voting individually (*singillatim*, line 52). The order was decided by lot in the trial of Oppianicus (*Clu.* 75: *ecce tibi eius modi sortitio, ut in primis Bulbo et Staieno et Guttae esse iudicandum*), but this was probably because, as already noted, the voting in this instance was open; cf. Greenidge (1901) 442.

28 Cf. Ross Taylor (1966) 79 on voting in the *comitia tributa*: "The Roman feeling for rank may

to vote. But even if there was no specified order, he may well have been able to manoeuvre himself into a position where he could be at the head of proceedings: Calvinus had served as praetor in charge of the *quaestio de ambitu* in 56 B.C., and so would have known how to manipulate court procedures to his advantage.[29] Again, we see a judge attempting to take assertive action within the judicial proceedings in order to influence those around him.

A rather different example is reported to have taken place at the trial of T. Munatius Plancus Bursa in late 52 B.C. (or early 51), which was conducted under new judicial regulations introduced by Pompey in the wake of Clodius' murder.[30] One of these regulations limited the use of laudatory speeches on behalf of the accused, and Plutarch reports that, when a written testimonial submitted by Pompey himself was about to be read out at the trial, Marcus Cato, who was serving as a judge, staged a protest.[31] By ostentatiously clamping his hands over his ears, he drew attention to the inappropriateness of the evidence and so prevented it from being presented (Plut. *Cat. Min.* 48.4: ἐπισχόμενος ὁ Κάτων τὰ ὦτα ταῖς χερσίν (ἔτυχε γὰρ δικάζων) ἐκώλυεν ἀναγινώσκεσθαι τὴν μαρτυρίαν).[32] In this case, Cato's initiative seems to have been motivated by a valid point of principle. But, for our present discussion, the important point is the shrewdly theatrical element of his protest. As a judge, he was evidently quite willing to strike a highly confrontational pose in the public glare of the judicial proceedings.[33]

Cato's boldness in undertaking this action derived in part (we may suppose) from his political experience as a senator. The same presumably also applied to Domitius Calvinus and Lentulus Spinther in the foregoing examples, as well as to those judges who stepped up to protect Cicero at the Bona Dea trial. In this respect, the assertiveness of certain Roman judges is not entirely surprising. To a degree, it was a predictable result of involving prominent, politically

well have resulted in the yielding of places at the head of the line to senators". Also n. 25 above.

29 See *Q. Fr.* 2.3.6; Broughton (1952) 208. Calvinus was later elected to the consulship of 53; Broughton (1952) 227–228.

30 See Alexander (1990) 159–160 (no. 327); Rotondi (1912) 410–411.

31 On the *Lex Pompeia de vi*, see Asc. *Mil.* 36C and 39C; Greenidge (1901) 391–397; Broughton (1952) 234. On its rejection of laudatory testimonials, see Dio 40.52.2.

32 Cf. Plut. *Pomp.* 55.4–5. The account at Val. Max. 6.2.5 is less vivid, but still records Cato's assertive opposition to the intended proceedings: *summovit eas* [*sc. tabellas Cn. Pompeii*] *e quaestione legem recitando, qua cautum erat ne senatoribus tali auxilio uti liceret.* See also Dio 40.55.1; Fehrle (1983) 218.

33 Note that Cato was ejected from the body of judges eventually selected to vote. See Plut. *Cat. Min.* 48.5; *Pomp.* 55.6; Dio 40.55.1. Cf. Asc. *Mil.* 53C.

active individuals in such proceedings. These men had considerable experience in undertaking civic action and carefully stage-managing their public personas. This political nous encouraged them to seize whatever chances for self-promotion arose. In this regard, Roman practice contrasts sharply with modern approaches to the selection of judges. As Cornish notes regarding juries in the 1960s in England: "The jury system aims to provide courts with a tribunal that is both impartial and representative of the ordinary citizen".[34] The "ordinary" Roman citizen, by contrast, would have had little in common with judges in the forum—either materially or in terms of social perspective.[35]

Indeed, one aim of modern courts is to render a jury as anonymous and as unremarkable as possible. Impartiality is thought to be best served if its members are unfamiliar to the litigants and ignorant of the details of the case.[36] The situation in ancient Rome was very different. Many judges would have already had a close familiarity with the events and individuals that they were judging; and rather than serving in a kind of anonymous capacity, their role was a highly public one in several ways. The *album* listing the names of potential judges to serve in the courts during the year was usually drawn up by the urban praetor in the first month or so of his office, and was posted in public.[37] Likewise, the challenging of judges once a specific panel had been selected

34 Cornish (1968) 25. On practices in the USA, see Larsen (2010) 965: "[Today's judges] are chosen through a variety of methods, the aim of which is to produce a jury that represents a 'fair cross-section of the community'". Cf. Alschuler and Deiss (1994) 876–901. On the social composition of juries in ancient Athens, see Todd (1990) for a useful survey of competing scholarly views.

35 For the huge financial resources of Roman senators, see Shatzman (1975) 403–425, who estimates that Cicero's property towards the end of his life was probably worth around thirteen million sesterces. On their shared cultural links with equestrians, see Wiseman (1971) 65–70, esp. 67: "The distinction between senators and *equites*, though intermittently of great political importance, tends to disguise the essential homogeneity of the moneyed class". Cf. also Nicolet (1966) 70–71; 470; Brunt (1988) 147 (on *equites*).

36 See Larsen (2010) 965–966: "Selection methods strive for a certain brand of impartiality. It is impartiality understood not simply as disinterestedness—that is, as not standing directly to benefit from a verdict in the case—but as ignorance. As described by one federal judge, the minds of ideal modern judges would be 'empty'". Cf. Anand (2005) 408: "the typical modern criminal trial jury, consisting of 12 people who do not know one another or any of the participants in the trial, who have never sat on a jury before". Also Cornish (1968) 46: "a litigant is unlikely to know more about most judges than the sparse information given on the jury panel: name, sex, address and occupation". On the occasional sequestration of modern judges, see Cornish (1968) 51; 145–148; Anand (2005) 426.

37 See *Clu.* 121; cf. *lex rep.* (lines 12–15): *CDL virei⟨s⟩ in eum annum lectei erunt, ea nomina omnia*

for a trial took place in full view of the Roman people.[38] (In modern trials, of course, this process is conducted behind closed doors.)[39] The aim here seems to have been a laudable one of procedural explicitness and transparency.[40] But one concomitant result was that the identity and behaviour of Roman judges frequently became the subject of public scrutiny and discussion.

Here, for example, is how Cicero describes the selection of the judges in the Bona Dea trial in 61 B.C. (*Att.* 1.16.3): *nam ut reiectio facta est clamoribus maximis, cum accusator tamquam censor bonus homines nequissimos reiceret, reus tamquam clemens lanista frugalissimum quemque secerneret* ("The challenging of the jury was accompanied by huge uproar, with the prosecutor rejecting the most disreputable individuals like an honest censor, and the defendant putting on one side the most worthy folk like a generous trainer of gladiators"). The phrase *maximis clamoribus* here probably refers not just to the agitated objections of the advocates, but to the shouts of surrounding observers as well.[41] Indeed, when describing the selection of judges for the earlier trial of Verres, Cicero refers to forceful shouts coming from the surrounding crowd and helping him to influence the actions of a *quaesitor* (*Verr.* 2.1.158: *vi populi atque hominum clamore atque convicio*).

In this respect, then, the spectacle associated with a trial in Rome began even before the formal presentation of set-speeches. The Roman people regularly took an interest in which judges had been assigned to a particular case and how the approaching contest was shaping up (The names of the judges selected for each case were also publicly displayed).[42] Indeed, in the second *actio* of the

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in tabula in albo, atramento script(e)⟨o⟩s; Lintott (1992) 92–93; also Greenidge (1901) 437–439; 445–446.

38 See Greenidge (1901) 440–441. The main criterion for rejection seems to have been especially close personal ties (familial or otherwise) with the trial's main participants. See *lex rep.* (lines 19–26): [*gener, socer, vitricus, pri*]*vignusve siet, queive ei sobrinus siet propiusve eum ea cognatione*{*m*} *attingat, queive ei sodalis siet, queive in eodem conlegio siet*; Lintott (1992) 94–95. Cf. *Verr.* 2.1.18; 2.5.136; *De or.* 2.263; *Fin.* 2.119; also Sherwin-White (1982) 25. Nevertheless, given the broad social networks that existed in ancient Rome, and the relatively small number of judges who could be challenged, it would have been difficult to eliminate all connections between the accused and individual members of a jury.

39 See e.g. Cornish (1968) 44–48.

40 Cf. Sherwin-White (1982) 21.

41 Cf. Moreau (1982) 141–142.

42 See *lex rep.* (lines 26–27). Text at Lintott (1992) 96–97. Cf. Greenidge (1901) 438–439. Two prominent politicians (Junius and Verres) were censured and fined for not maintaining the lists properly (as *quaesitor* and praetor respectively); see *Clu.* 91, 92, 96. *Verr.* 1.39. A remark at *Phil.* 5.15 suggests that these lists were stored for posterity in the *aerarium*.

Verrines (*Verr.* 2.3.145) Cicero portrays a certain senator, Aemilius Alba, sitting at the entrance of a market (*sedentem in faucibus macelli*) openly boasting about Verres' bribery of the judges and the man's certain acquittal in the current trial.[43] Although similar posturing prevails with regard to trials today, the highly visible role of judges at Roman trials allowed their apparent character and reputation to figure in such speculations to a far greater extent. Indeed, in the case of Cato, this reputation at times proved a real problem for advocates. Plutarch reports that the public perception of the man's moral integrity was so strong that advocates who opposed his presence on a jury too strongly risked appearing unsure of the justice of their case.[44]

And yet Roman juries did not consist solely of prominent politicians such as Cato, Calvinus and Gabinius. Many of the selected equestrians and *tribuni aerarii*, although comfortably affluent and far removed from the world of the "ordinary" citizen, would have lacked the high political profile of their senatorial counterparts. Nevertheless, their obligations as judges placed them in a position of considerable public scrutiny. They were on display during the course of a trial and were, in a sense, judged in turn by the rest of Rome. In his account of the Bona Dea trial, for example, Cicero depicts the respectable men of Rome appraising the worthiness of the individuals selected to serve on the jury (*Att.* 1.16.3): *ut primum iudices consederunt, valde diffidere boni coeperunt … maculosi senatores, nudi equites, tribuni non tam aerati quam, ut appellantur, aerarii* ("As soon as the jury took their seats, honest men began to fear the worst … Flyblown Senators, beggar Knights, and Paymaster Tribunes who might better have been called 'Paytakers'").[45] This negative characterisation seems at odds with the praise that Cicero (as we have seen) bestows upon the judges for supporting him as he gave evidence. We may suspect that he is shaping his account here with one eye on the accusations of bribery that he intends to make later in the letter (the more penurious the judges, the more susceptible they are to corruption).[46] But there is no reason to question the notion that the apparent character of a jury was closely scrutinised as a trial progressed.[47]

43 On Aemilius Alba, see also *Verr.* 2.3.148, where he is described as an *amicus* of Verres. Cf. Frazel (2009) 144.

44 See Plut. *Cat. Min.* 48.5. Cf. Cicero's comments in *Pro Murena* on the authority that Cato brought to the side of the prosecution (*Mur.* 58: *multo magis eius auctoritatem quam criminationem pertimescam*).

45 For the translation, see Shackleton Bailey (1999) 79.

46 Cf. Balsdon (1966) 72; Moreau (1982) 144.

47 See also Cicero's emphasis on *aspectus* (visual appearance) at *Verr.* 2.1.19, where he tries to argue that the (supposedly) staunch jury eventually selected for Verres' trial inspired

Indeed, Cicero goes on to suggest that the jury was judged not just by the Roman people as a whole but even by its own members (*Att.* 1.16.3): *pauci tamen boni inerant, quos reiectione fugare ille non potuerat, qui maesti inter sui dissimiles et *maerentes* sedebant et contagione turpitudinis vehementer permovebantur* ("Even so there were a few honest men whom the accused had not been able to drive off at the challenge. There they sat, gloomy and shame-faced (?) in this incongruous company, sadly uncomfortable to feel themselves exposed to the miasma of disreputability").[48] Cicero himself had served as a judge and was presumably well attuned to the various stresses that the role entailed.[49]

Roman judges, then, were by no means the anonymous, essentially passive body that we expect in today's courts. A remarkable incident from a trial dating to 54 B.C. illustrates the way in which one group of advocates (including Cicero) attempted to exploit this fact for their advantage. Asconius tells us that, at the end of the trial of Aemilius Scaurus on charges *de repetundis*, the defendant and his supporters orchestrated a dramatic group-supplication as the judges prepared to vote (Asc. *Scaur.* 28C):[50]

> ad genua iudicum, cum sententiae ferrentur, bifariam se diviserunt qui pro eo rogabant: ab uno latere Scaurus ipse et M'. Glabrio, sororis filius, et L. Paulus et P. Lentulus, Lentuli Nigri flaminis filius, et L. Aemilius Buca filius et C. Memmius, Fausta natus, supplicaverunt; ex altera parte Sulla Faustus, frater Scauri, et T. Annius Milo, cui Fausta ante paucos menses nupserat dimissa a Memmio, et C. Peducaeus et C. Cato et M. Laenas Curtianus.
>
> When the vote was being taken, Scaurus' supporters divided into two groups at the jurymen's knees: on one side Scaurus engaged in supplication along with M'. Glabrio (his sister's son), L. Paulus, P. Lentulus (son of Lentulus Niger the priest), the younger L. Aemilius Buca and C. Memmius (son of Fausta); on the other side were Faustus Sulla (half-brother

confidence in the onlooker. Cf. the comment at Asc. *Mil.* 38C: *album quoque iudicum qui de ea re iudicarent Pompeius tale proposuit ut numquam neque clariores viros neque sanctiores propositos esse constaret.*

48 On the text and translation, see Shackleton Bailey (1965) 150–151; 315–316; and (1999) 78.

49 On Cicero as *iudex*, see *Rab. Post.* 9: *accusavi de pecuniis repetundis, iudex sedi, praetor quaesivi, defendi plurimos.*

50 See Alexander (1990) 143 (no. 295). Cicero was one of six advocates speaking for the defence; Asc. *Scaur.* 20C. David (1992) 624–626; Marinone (2004) 132.

> of Scaurus), T. Annius Milo (who a few months previously had married Fausta following her divorce from Memmius), C. Peducaeus, C. Cato and M. Laenas Curtianus.[51]

As far as we can tell, this kind of stunt was unusual in the law courts.[52] On occasion, defendants adopted supplicatory poses during an advocate's impassioned pleas on their behalf;[53] but the timing of this particular supplication, so as to coincide with the act of voting, placed public attention far more directly upon the judges. Certainly, from a practical point of view, they would have been able to keep the content of their vote concealed; yet the pleas of the suppliants created a new and awkward social situation that the judges now had to negotiate as well. With the Roman public scrutinising every move, each judge had to decide how much outward sympathy and support to show the prostrate men as he walked past on his way to the voting-urn. To some of the judges, this kind of situation may not have been entirely unfamiliar. We hear of similar supplications taking place in the senate and other public contexts as well.[54] To a degree, then, judges may have had at their disposal certain stylised actions that served to convey their acceptance or rejection of the personal appeal.[55] Even so the group supplication succeeded in endowing the voting procedure with a particularly heightened sense of drama, one in which the judges played a prominent role.[56]

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51 Modern scholars have explored in detail the relationships of those involved and their motives for taking part. See Marshall (1985) 127; 150–153; Lewis (2006) 228–230. In some instances, their association with Scaurus is not clear, but most had some kind of familial connection. Cf. Courtney (1961).

52 One precedent seems to be the supplication of L. Piso (probably in 110 B.C.) as judges cast their votes; see Val. Max. 8.1, abs. 6; Alexander (1990) 24 (no. 48) and 178 (no. 378); David (1992) 712–713. But the supplication by Scaurus and his associates operates on a much larger scale.

53 See e. g. *Font.* 48; *Mur.* 86–87; Quint. *Inst.* 6.1.34. Cf. Naiden (2006) 33–34; 342–343; Bablitz (2007) 53; Hall (2014) 64–98.

54 See e.g. *Q. Fr.* 2.6.2; *Att.* 1.14.5; *Verr.* 2.2.95. For discussion, see Kaster (2009) 314.

55 In supplications to a single individual, a positive response was usually signified by raising up the suppliant; see, e.g., Livy 39.13.3 (*attollere*); Val. Max. 5.1.8 (*adlevavit*); Suet. *Ner.* 13 (*adlevatum*). Cf. Gould (1973) 78. Presumably though such an action was impractical in this group situation. Perhaps hand-clasps and embraces were more appropriate as a show of solidarity. (For examples of embraces, see e.g. *Font.* 46; *Planc.* 99 and 102; Plut. *Ti. Gracch.* 12.2; Pliny *Pan.* 86.3. For examples of hand-clasps, e.g. *Flac.* 103; Plaut. *Curc.* 307; Verg. *Aen.* 6.698; 8.124.)

56 As with the deliberate displaying of votes by Spinther and Calvinus discussed above, overt

2 Protocols and Demeanour

This last example in particular raises vital questions about the rules of behaviour that prevailed at Roman trials and the role of the court's president (or *quaesitor*) in enforcing judicial protocols. To be sure, in legal terms at least, the president possessed considerable powers of compulsion over judges.[57] But there seems to have been considerable variation in how stringently individual officials attempted to apply them in any given situation. There is no suggestion, for example, that Domitius Calvinus or Lentulus Spinther suffered any consequences for revealing their votes at the respective trials discussed above. And Asconius' account of the group supplication at the trial of Scaurus suggests that it was carried out successfully, with no legal consequences for those involved. This reluctance to intercede in procedural matters may have arisen in some cases from the official's lack of experience in judicial affairs: praetors often had little specialised training and were in office for only a year.[58] In other instances, they may not have wanted to appear biased in favour of one of the parties involved in the trial. The dynamics between president and jury at a Roman trial were thus very different from those that we are familiar with today.[59]

The sheer size of the juries in Cicero's time probably contributed to the absence of strict protocols as well. It is one thing for a modern judge to exert her or his beady influence over twelve judges in an enclosed space. It is quite another to manage a jury of some fifty to seventy people shuffling about in the open-air environment of the Roman trial.[60] Indeed, some of these judges

expressions of support for Scaurus by the first to cast their ballots may have been intended to influence the decisions of those voting afterwards.

57 The *lex repetundarum* lines 45–48, for example, grants the praetor the authority to impose fines; text in Lintott (1992) 100–101. See also Sherwin-White (1982) 23.

58 See Brennan (2000a) 237–239; (2000b) 367–368; 451. Cf. the incident reported to Cicero by Caelius (*Fam.* 8.8.3), in which the praetor Laterensis misunderstood the prevailing legal procedure (*leges ignorans*). On occasion, however, a praetor could gain a reputation for taking his judicial responsibilities very seriously. See *Fin.* 2.62; Val. Max. 3.7.9.

59 Cf. Powell and Paterson (2004) 33: "There is no record of an advocate ever being interrupted for irrelevance". See also Frier (1985) 210, who refers to the "passivity" of the court president; Bablitz (2007) 89–90; Liva (2009). It is intriguing that Cicero in his account of the Bona Dea trial omits any mention of the president of the court. Indeed, we do not even know who the president was. It is the judges (not the president of the court) who are depicted as the object of the senate's praises (*Att.* 1.16.5: *laudantur iudices*). See Balsdon (1966) 71; cf. Broughton (1952) 179; Moreau (1982) 132–133.

60 On the number of judges typically involved in Late Republican trials, see Mommsen (1899)

may have been reluctant participants. An oratorical caricature dating to around 161 B.C. suggests that a grudging and occasionally cavalier approach to juridical duties had long been a problem in Rome (Macrob. *Sat.* 3.16.16):[61]

> veniunt in comitium, tristes iubent dicere. quorum negotium est narrant, iudex testes poscit, ipsus it minctum. ubi redit, ait se omnia audivisse, tabulas poscit, litteras inspicit: vix prae vino sustinet palpebras. eunt in consilium. ibi haec oratio: "quid mihi negotii est cum istis nugatoribus?"
>
> They come to the *comitium*, grumpy, and call for the arguments to be made: the two sides state their cases, the judge asks for the witnesses to be called, while he himself goes to pee. When he comes back, he says he's heard everything, calls for the accounts, peers at the writing—scarcely able to keep his eyelids open for the wine he's drunk. They withdraw for a conference, where the discussion runs like this: 'What have I to do with those fools?'

The legal setting here is not the same as the large-scale, formal *quaestiones* that we encounter in Cicero's day;[62] and the scene is of course exaggerated for satirical purposes.[63] Nevertheless, the generally chaotic atmosphere that it depicts does in fact find a correspondence in Cicero's own description of a restless jury over a century later (*Brut.* 200): *videt oscitantem iudicem, loquentem cum altero, non numquam etiam circulantem, mittentem ad horas, quaesitorem ut dimittat rogantem* ("[the passing critic] sees one of the judges yawning, chatting to a judge beside him, occasionally even talking in a group, sending a slave to find out the time, asking the president of the court to adjourn the hearing"). There is no erudite presiding magistrate here lecturing atten-

218–219; Greenidge (1901) 441–456; McDermott (1977); Lintott (2004) 74–75. Cf. Larsen (2010) 961 and 994–997 on the traditional number of 12 judges in modern juries in the USA.

61 Text and translation in Kaster (2011) 117. The passage as a whole derives from a speech by C. Titius in support of the *lex Fannia*; cf. Malcovati (1976) 202–203 (frg. 2) on C. Titius (no. 51); Rotondi (1912) 287–288.

62 The grumpy (*tristes*) individuals were perhaps serving as advisers to a judge (*iudex*) in a civil case; or they may have formed part of a jury. (At Macrob. *Sat.* 3.16.14 they are described as going to the forum *ad iudicandum*.)

63 Note in particular the passage's numerous verbs and changes in grammatical subject, which seem designed to convey a sense of confused bustle.

tive and obedient judges on the finer points of legal interpretation; instead we find impatient aristocrats rather presumptuously pressing for an early adjournment.[64]

Other examples from the Late Republic likewise point to the rather chaotic conditions that could prevail at times in the forum. The judge Staienus is said to have almost missed a vote because he was elsewhere in the forum taking part in a separate judicial case;[65] and Asconius reports one instance where a praetor simply failed to turn up for an appointed meeting—perhaps because of ill-health, or possibly out of cynical calculation.[66] Similar frustrations continued into the imperial period.[67] This is not to claim that the Roman law courts lacked rules of procedure or to suggest that their organisation was utterly hopeless. On occasion, a judge (or other official) could be called to account for not observing proper protocols.[68] Indeed, getting a prominent senator to trial at all required a good deal of coordinated action by various parties. But it is important that we do not attribute to the running of Roman trials some of the aspects that we take for granted in today's courts.

3 Judges and Displays of Emotion

These considerations have a particular bearing on our appreciation of Cicero's judicial oratory. Modern scholars have rightly observed the distinctive influence on such trials of the surrounding public audience (or *corona*).[69] Their shouts and applause created a dynamic that is largely absent from the tightly controlled courts familiar to us today. But what about the reactions of the judges? To what extent did this segment of the audience also engage in overt

64 For unwilling judges, see also *Mur.* 42: *cogendi iudices inviti, retinendi contra voluntatem.* Visible signs of boredom are not of course restricted to ancient juries; see Joiner (1975) 153: "jurors become bored. They twist and turn, look at the ceiling, at their shoes; but so do judges. I have noticed when I am attentive and listening carefully, not bored, the jury is likewise". But judges chatting in groups and pressing for an adjournment are a less familiar phenomenon in modern courts.

65 See *Clu.* 73–74; Alexander (1990) 75–76 (no. 149 and 150); Patimo (2009) 555–558. Cf. also the incident reported at Plut. *Cat. Min.* 16.6.

66 Asc. *Corn.* 59C.

67 See e.g. Juv. *Sat.* 16.43–47. Cf. Bablitz (2007) 181.

68 See Alexander (1990) 77 (no. 153); 78 (no. 154); 84 (no. 170). Cf. Ferri (2012–2013) 64.

69 See Scalais (1951) 191–192; Frier (1985) 235–236; David (1992) 471–474; Lintott (2004) 63; Bablitz (2007) 57–58.

expressions of emotion during a trial? And to what extent did these shape the Roman advocate's choice of rhetorical strategy?[70]

Greek and Roman rhetorical theory had of course long recognised the utility of playing upon an audience's emotions.[71] The anonymous *Rhetorica Ad Herennium*, for example, lists a number of tropes that can be profitably employed as the orator seeks to stir the judges' pity.[72] But it is less clear whether this process of emotional persuasion was regarded as an essentially internal and invisible process, as the orator's words exerted their influence almost imperceptibly, or whether the Roman advocate expected to see the judges—who, as we have seen, were generally well educated and wealthy men—display their emotions in a visible and voluble fashion. Again, modern protocols have the potential to mislead in this respect. Although we might regard the occasional display of emotion by judges as appropriate in today's courts (especially in reaction to the harrowing testimony of victims), the formality of court protocols normally exerts a strong repressive tendency.[73] To what extent did such pressures apply to Roman counterparts?

Several ancient passages indicate that an orator expected to be able to gauge the reactions of judges from their facial expressions. According to Quintilian, Cicero himself referred to the face as an important guide to the speaker (*Inst.* 12.10.56): *'eius vultus saepe ipse rector est dicentis', ut Cicero praecipit* ("Indeed, as Cicero advises us, the judge's face is often itself the speaker's guide"). The precise Ciceronian reference for this assertion is in fact uncertain;[74] but Cicero's own reconstruction in *De oratore* of two famous emotional defences by

70 For discussion of similar issues in connection with the Athenian lawcourts, see Bers (1985); Lanni (1997); Tacon (2001); Thomas (2011).

71 In the Greek tradition, Arist. *Rh.* 1.2.4–7; 2.1.5–2.11.7. At Rome, *De or.* 2.185–216; *Orat.* 131; Quint. *Inst.* 6.2. Cf. Solmsen (1938); Gill (1984); Wisse (1989) 250–300.

72 See *Inv.* 1.106–109; *Rhet. Her.* 2.50. Cf. Lussky (1928).

73 An account of a modern barrister's performance as related by a judge highlights the constraints that can prevail in today's courts: "The timing, the carefully pitched voice, the studied gestures, the calculated histrionics never overdone …, all was such an artist's performance that when the jury were directed to find the defendant not guilty, I found it difficult not to applaud". Note that the judge did *not* actually burst into applause, presumably because of the social and situational protocols that prevailed in court. For the account (from a letter to *The Times* newspaper), see Cornish (1968) 154.

74 Russell (2001) 310, n. 81 tentatively suggests *De or.* 3.2.21 (*sic*, presumably 3.221) and *Orat.* 60 as Quintilian's possible reference point. Both these passages, however, focus on the importance of the *vultus* for the orator's own performance, not for gauging the reactions of the audience. For further references to assessing the mood of a *iudex* by his facial expression, see Quint. *Inst.* 6.4.19 and 6.2.7.

M. Antonius depicts the orator as carefully assessing the mood of his audience and basing his tactics on palpable shifts in their reactions. With regard to his defence of M'. Aquillius, for example, the character of Antonius remarks (*De or.* 2.195): *sensi equidem tum magno opere moveri iudices* ("At this point I perceived indeed that the judges were greatly affected"). The explicit reference here to *iudices* confirms that Cicero envisions a scene in which the judges, and not just the accompanying public crowd, readily displayed their emotions; indeed, the phrase *magno opere* suggests a certain expansiveness in this emotional expression.[75]

Other references are more explicit still. In *Brutus* Cicero suggests that the most successful orator is the one who is able to produce weeping in the judge (*Brut.* 296: *cum velit fletus*; *Brut.* 322: *qui ad fletum* (*sc. iudicem*) *posset adducere*). We should resist any inclination to view *fletus* in these instances as metaphorical for "sorrow" as a general emotional state rather than literal weeping.[76] Two passages in Quintilian are clear on this point. The first asserts directly that the orator's power involves not just a general swaying of emotions, but the physical manifestation of this state through tears (Quint. *Inst.* 6.1.23): *plurimum tamen valet miseratio, quae iudicem non flecti tantum cogit, sed motum quoque animi sui lacrimis confiteri* ("What carries most weight, however, is the appeal to pity, which forces the judge not only to be moved, but also to express openly this emotion through his tears").[77] A second passage likewise implies that tears were sometimes clearly visible on the judges' faces at the climax of a speech (*Inst.* 6.2.7): *an cum ille qui plerisque perorantibus petitur fletus erupit, non palam dicta sententia est?* ("When that weeping which is the goal of most perorations breaks forth, is not the verdict declared openly for all to see?").[78]

It is true that Cicero makes few direct references in his judicial speeches to the tears of the judges present. Yet this omission is not especially surprising. His

75 Cf. also Cicero's comment in connection with Antonius' defence of Norbanus; *De or.* 2.200: *quod ubi sensi me in possessionem iudicii ac defensionis meae constitisse*. For further discussion, see May (1994).

76 Cf. Hall (2014) 124–126.

77 Cf. Bablitz (2007) 117: "on two occasions Quintilian speaks of tears as a reality rather than as a possibility, and views the tears as evidence of the advocate's successful emotional appeal".

78 Cf. Quint. *Inst.* 12.10.62: *hic iram, hic misericordiam inspirabit: hoc dicente iudex pallebit et flebit et per omnis adfectus tractus huc atque illuc sequetur nec doceri desiderabit. pallebit* in Russell's text is an emendation by Stroux, but the verb *flebit* seems secure enough. The two together emphasise the fact that the grand emotional style often produces an effect on judges that is clearly visible.

focus during perorations is usually placed upon the plight of the accused and accompanying family members; mentioning the judges' reactions at this point would have run the risk of dissipating, rather than sharpening, his emotional impact. Besides, as Cicero planned his strategy for the peroration beforehand, he could not be sure how effective his appeals would turn out to be. It made good sense then to keep the audience's attention directed towards the misfortunes of those most directly affected by the trial. In only one speech does he diverge from this general pattern. At the conclusion of his defence of Plancius, he claims that the tears of both the *quaesitor* and the jury as a whole have produced such an emotional reaction in him that he cannot continue speaking (*Planc.* 104): *tuae me etiam lacrimae impediunt vestraeque, iudices, non solum meae* ("Your tears also [sc. C. Flavus] and those of you judges—not just my own—choke my voice").[79] The image of these upper-class males weeping in public is an arresting one, but, as we have seen, it is consistent with the expectations articulated in the rhetorical handbooks. The remark is thus valuable evidence that judges in the Late Republic did on occasions openly shed tears as they witnessed the dramatic events in court. Roman judges, it seems, not only felt able to engage in assertive action during a trial; they also felt few constraints regarding the public display of high emotion.[80]

4 Conclusion

Understanding the behaviour of Roman judges is a difficult business, not least because, as we have seen, much of our evidence is anecdotal in nature. Generalising on the basis of a handful of incidents from trials in the Late Republic is a hazardous process, and it is important to acknowledge that numerous trials almost certainly passed without notable incident as far as the selection of judges, the hearing of speeches and evidence, and the final vote were concerned. Moreover, as I have suggested, it was probably the more prominent and politically ambitious members of juries who were prepared to engage in

79 Cicero uses this trope—that he is unable to continue speaking because of his tears—in several other judicial defences (*Mil.* 105; *Rab. Post.* 47–48; *Cael.* 60; *Sull.*92). Only in *Pro Plancio*, however, does he refer to the accompanying tears of the judges as well. For general discussions, see Casamento (2004); Hall (2014) 99–128.

80 It could be argued perhaps that the detail of the judges' tears is a fiction inserted at the time of Cicero's circulation of the written version of the speech. But there is no positive evidence to support such a thesis. See further Hall (2014) 124–127. Cf. Bablitz (2007) 117 on the licence to express emotions in the centumviral courts of the early Empire.

assertive, high profile actions in the course of proceedings. If this is the case, it becomes even more difficult to talk of the "typical" behaviour of Roman judges. Nevertheless, the available evidence allows us to make several significant observations.

As we have seen, Roman trials were often characterised by a certain informality in their administration, and in the behaviour of the attendant crowds and judges. This feature is not only fascinating from the point of view of cultural difference. It also helps to explain two of the other remarkable elements in Roman practice. The licence granted to judges in their general behaviour helps to explain Cicero's repeated use of highly emotional pleading. He frequently chose to exploit grandly theatrical appeals precisely because he felt confident of being able to generate a strong, visible response among many of the judges. Rhetorical theory acknowledged the importance of tailoring one's oratorical style to match the audience, and the potential volubility of Roman judges naturally encouraged Cicero's exploitation of emotional appeals.[81] This is not to suggest that his fellow orators inevitably adopted the same approach. The use of lofty and dramatic pleas was a high-risk rhetorical strategy that required considerable talent for its successful execution.[82] There were probably many advocates who recognised their own oratorical limitations and did not seek to exploit the judges' emotions in the same way.

Second, the informal protocols of Rome's courts also enabled judges to play a far more extensive role in proceedings than that of passive anonymous observer. Indeed, there was a certain duality to the part that they played. Most obviously of course, as those who voted on conviction or acquittal, they were the prime audience in the forum's theatre of justice; yet they were themselves also the subject of intense public scrutiny and a significant part of the judicial spectacle as a whole.[83] Indeed, this aspect of self-conscious public performance seems to have shaped the assertive actions of judges such as Lentulus Spinther and Domitius Calvinus; and it may have played a part also in the displays of emotion that judges presented in response to the speeches of the

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81 See Cicero's own remarks at *De or.* 3.211: *refert etiam qui audiant, senatus an populus an iudices; frequentes an pauci an singuli, et quales* ("Who your audience is also matters: whether it is the senate, the general public, or a jury, and whether they are many, few, or individuals—and what kind of people they are"). Cf. Quint. *Inst.* 11.1.43 and 45.

82 See Quint. *Inst.* 6.1.44: *illud praecipue monendum, ne qui nisi summis ingenii viribus ad movendas lacrimas adgredi audeat* ("In particular, I must warn against a speaker boldly trying to stir up tears if he does not possess a really strong natural talent"). Cf. *De or.* 2.205; Quint. *Inst.* 6.1.45.

83 For a similar dynamic in the ancient Athenian courts, see Lanni (1997) 187.

various advocates. To this extent, they could be minor actors in the judicial drama as well as its audience. This dynamic was one that Cicero was evidently well aware of—and so too should the modern scholar.

PART 5

Language and Style in Performance

CHAPTER 15

Style, Persona and Performance in Aeschines' Prosecution of Timarchus

Christopher Carey

In 346 B.C. Aeschines and Demosthenes were colleagues on two of the embassies to Macedonia which ended the state of war between Athens and Macedonia which had persisted (admittedly in a desultory way) since 357. The whole process created some strange bedfellows, as different groups and individuals manoeuvred for reasons of principle, pragmatism or both. Demosthenes had been making bellicose noises about Philip since he realised late in the 350s that Philip represented a unique threat and was not just another in the line of vulnerable Macedonian kings to be destabilised, bolstered or placated according to the imperatives of Athenian foreign policy. Yet when in 348 Philokrates was indicted by *graphē paranomōn* for proposing (prematurely, as it turned out) to deal with Macedonia, Demosthenes was his supporting speaker in the trial.[1] Aeschines too was initially hostile to the idea of accommodation with Philip and had worked with the senior Athenian politician of the day, Euboulos, to create an alliance of Greek states to resist the threat. For the Assembly the inclusion of people who had spoken against Philip offered the prospect of robust representation of Athens' interests in the peace negotiations.

In the event Philip managed to secure a peace which delivered more benefits to him than to Athens. But even before peace was finally concluded Demosthenes had begun to work against it. He indicted Aeschines after the latter served on the third Athenian embassy of 346. His rapid *volte-face* clearly indicates that his involvement in the peace process was pragmatic at most (if not cynical). It is less clear whether he had always intended to weaken the peace so soon or was reacting to events, seeking to distance himself from the results of the negotiations, as benefits failed to materialise, or genuinely convinced that his colleagues had not pressed Athens' interests as forcefully as they should. His choice of Aeschines may have been personal (certainly they came to hate each other). But it was not just personal. Aeschines was also targeted by another politician, Timarchus. This was a factional attack, not just a duel between

1 Aeschines 1.14–15. In what follows translations of Aeschines are my own.

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Demosthenes and Aeschines. The choice of Aeschines was natural. Aeschines had committed to the peace and had argued for it strongly at Athens. And he remained committed. His change of heart made him an obvious target for suspicion within Athenian democratic culture, where those who served Athens at a distance like envoys and generals regularly found themselves objects of suspicion and targets of prosecution.

Demosthenes' group made two mistakes. Firstly they underestimated their target. Aeschines was by this time a seasoned politician. He struck back immediately and with devastating effect by prosecuting Timarchus. The second mistake was the involvement of Timarchus, whether this was his own initiative or he was chosen as front man for the faction. Aeschines invoked against Timarchus an action which is otherwise (for whatever reason) little attested in our sources, the *dokimasia rhētorōn*, (scrutiny of public speakers). This was not in fact a routine scrutiny of the kind used to test the qualifications of new citizens or candidates for office but an *adhoc* action open to *ho boulomenos*. The grounds available were varied, and Aeschines manages to squeeze in almost all of them. But the core allegation was that Timarchus had prostituted himself as a young man, an act which automatically rendered a man unfit to exercise the rights of Athenian citizenship.[2] From Aeschines' speech it looks as though Timarchus had enough of a reputation to make such an attack feasible. Some of the public sneering about Timarchus' sexual past, which Aeschines narrates, was widely witnessed and so blatant invention by Aeschines immediately refutable, which suggests that Timarchus was in fact a target for gossip.[3] He had however been active as a politician for at least fifteen years[4] in a culture where prosecution was a favoured tool for weakening or eliminating opponents. And we have no evidence of a prior prosecution. It may be that the task of converting innuendo and suspicion into evidence and argument seemed too demand-

2 It has been argued that the law applied only to active politicians. In substance the position is misguided, since though the *dokimasia rhētorōn* applied only to public speakers, Andok. 1.100 is decisive for the view that the law imposing disfranchisement on males who prostituted themselves (or had been prostituted) applied to all citizens; see further Carey (2004) 135 n. 41. However, it is inescapable that in practice only members of the elite would be exposed to prosecution, since the demands of a public action and the penalties for conspicuous failure (n. 5 below) would deter anyone without the speaking skills, socio-political network and financial resources needed for a high-profile action against a public figure.

3 §§ 81–86, 125–131, 157. As Fisher notes (2001) 57, Demosthenes grudgingly admits that Timarchus' sexual past was the subject of gossip at 19.233.

4 See Fisher (2001) 20–23 for Timarchus' career.

ing; and the risks for conspicuous failure were high.[5] Equally it could be that Timarchus was too hardened a litigant or too well-connected to be considered vulnerable. Whatever the reason, we should not suppose that Timarchus was an easy target or that his conviction was in any sense inevitable. However, the judges found against him and he was disfranchised.[6] The success of the prosecution was due to the ruthless brilliance with which Aeschines presented his case, an exquisite blend of circumstantial evidence, moral positioning and acting. Its effect was far-reaching; Demosthenes waited another three years before taking his accusations against Aeschines to court and, though the reasons for the delay may be complex, one aspect was almost certainly a reluctance to tackle Aeschines until the ground had been very fully prepared.

Aeschines' speech like his other speeches rests heavily on narrative, in this case Timarchus' scandalous past. But conceptually the strategy is to turn the contest with Timarchus into a Manichean clash between value systems and lifestyles, not just individuals: law and chaos, democracy and oligarchy or tyranny, discipline and decency on the one hand and self-indulgence and depravity on the other, male and female, past and present. But given that value systems form part of a shared perceptual cultural conglomerate[7] rather than an objective set of formulated rules, all such antitheses are inherently flexible and Aeschines is able to move the boundaries between categories to include and exclude according to need. Within this nexus of overlapping and sometimes shifting antitheses the central (and stable) contrast is between Aeschines himself and Timarchus, and indeed beyond Timarchus his associates, especially Demosthenes. This binary mode of presentation is perfectly normal in Athenian trials, where antithesis permeates the rhetoric from syntax upwards. But in keeping with the charge, which focuses not on words and policies in the present but on Timarchus' use of his body in the past, the contest itself is given a physical emphasis[8] which in its extent and explicitness is unusual in political trials. There is a strong emphasis on oratorical manner and physical condition, not just in general but in relation to the present contest. Aeschines seeks to set the

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5 See in particular on this Harris (1999/2006).

6 D. 19.257, 284.

7 The term is taken from Murray (1947) 66–67's notion of the "inherited conglomerate", which was taken up by Dodds (1951) 179.

8 It is striking that the word for "body", *sōma*, occurs no fewer than 28 times in the speech, accounting for almost half the occurrences in Aeschines' three surviving speeches. The effect is to maintain a relentless emphasis on the abuse of the body and its implications for the physical condition of the accused and all like him and to sensitise the audience to the appearance of all parties to the trial.

agenda not only for the reception of his own speech but also for Timarchus' performance and the way it is perceived. The judges are invited to observe all the participants in respect to appearance, clothing and gesture, to use what they see as a basis to evaluate both what is said and the speaker, and to judge accordingly.

Timarchus' unsuitability to advise the Athenians is based, as noted above, on the allegation that he sold his body for sex. This is given the highest profile, because it is the most scandalous. It also allows free play to the imagination. Though Aeschines is concerned to create a modest persona for himself, a point to which I return below, his narrative constantly invites the audience to envisage what went on behind closed doors. This is at a practical level a useful way of substituting conjecture for fact. But it also licences the audience to speculate about the precise physical details in a voyeuristic way. But though this is the core allegation against Timarchus, Aeschines manages to bring in a range of other charges which could equally have been brought against him under the same procedure, though possibly with less chance of success. Another ground available for *dokimasia rhētorōn* was squandering one's inheritance (§ 30); this too is alleged against Timarchus and is closely connected with his decision to sell his body for sex (§§ 42, 96–101). Abuse of parents (which was also open to a *graphē goneōn kakōseōs* in the Athenian system) was another charge which exposed a politician to *dokimasia rhētorōn* (§ 28). Aeschines cannot realistically charge Timarchus with this, since his father died while he was young. But he manages to taint Timarchus with the moral (if not the legal) opprobrium of the charge by accusing him of wilfully neglecting the disabled uncle who was dependent on him (§§ 103–104) and ignoring his mother's entreaty not to sell a farm which she hoped would provide for her burial (§ 99). And he charges him with gratuitous and unprovoked violence. He gives us in Timarchus a character without scruple, restraint or concern for law or collective values in any area of his life.

The case opens with an account of the legal basis for the charge. But the account goes far beyond the specifics of the allegations against Timarchus to embrace Athenian legislation dealing with orderly conduct, especially sexual conduct, more generally. The sense of coherence created by this narrative of the law is a fiction.[9] Though we cannot date all the laws listed, we can be sure that the last of the laws bundled together as part of an established legislative package (§§ 28–32), and the key one for Aeschines' purpose, the one

9 Cf. Carey (2000) 31 n. 26 and more fully Fisher (2001) 127–128. For such (hypothetical) narratives, see Wohl (2010) chapter 4; Giannadaki (forthcoming).

which created the procedure of *dokimasia rhētorōn*, is no more than half a century old, despite his assertion that the laws listed are "long established legislation" (§33). Aeschines does not actually assert in so many words that this law is Solonian; the law is the work of an unspecified "legislator", *nomothetēs* (§27). But this reference comes immediately after an extensive discussion of the public conduct of Solon and at the end of a series which associated the laws inculcating *sōphrosynē* collectively with Solon (§6)[10] and it is difficult not to identify the anonymous legislator as Solon. Though there is—at this point—a pronounced focus on propriety in physical contact between males, Aeschines also includes legislation on the orderly conduct of Assembly meetings (§§22–24). The addition is designed to build a firm bridge between public and private and strengthen the link between the legislation under which Timarchus is charged and other Athenian laws dealing with sexual conduct. Though Aeschines' account may strike the modern as longwinded, the effect is to create the impression of a unified and coherent set of laws straddling public and private life as a collective source of social stability and to place Timarchus' alleged conduct in uncompromising opposition to these laws. The opposition between Timarchus and the laws is made explicit at the beginning of the account of his career of depravity (§37) and is reinforced by the matched structure of the legal narrative and the account of Timarchus' life, each presented in chronological sequence.[11] The laws impose order on each stage in a person's life and at each stage Timarchus has breached them. A complementary aspect of sexual legislation is introduced later (§§182–184), that dealing with female chastity. Unlike the speech *Against Ctesiphon*, where anxieties about coherence in the body of laws and the possibility of confusion are allowed space, if only to be rejected (3.37), this speech creates in the area of law a seamless continuum from the first legislator through the creator of the larger code to the contemporary democracy. This includes legislation in the present, since the panel of judges (identified with the Assembly, as is normal in the orators) are said by Aeschines to have passed a law designed to guarantee the orderly conduct of Assembly meetings (§33). He claims that this was as a direct result of disorderly behaviour on the *bēma* by Timarchus:

> But you added another new law after the splendid pankration this man staged in the Assembly, in utter shame at the incident: that at each

10 I return to this passage below.

11 The opposition is pointed up by Aeschines' use of the verb *antexetazein* in §37, not just "examine" but "examine in comparison/contrast".

> Assembly a tribe should be selected by lot to preside over the platform. And what did the proposer of the law order? He instructs the members of the tribe to sit as protectors of the law and the democratic constitution on the ground that, unless we summon help from some source against men who have lived like this, we shall not be able to debate even the most serious matters.

The link between this law and Timarchus looks tenuous at best. Aeschines never indicates how it is to prevent disorderly speakers and his account of the role of the tribal contingent is vague to the point of evasion. This looks more like an attempt to secure decorum more generally, possibly among the audience rather than on the *bēma*.[12] But the allegation is neatly hurried past the judges without allowing anyone time to reconstruct events. It allows Aeschines to create a link between the legislation of the first lawgivers and his current addressees and to place Timarchus in opposition to all. And in his reconstruction just like the present audience from the very first the legislators had in mind people just like Timarchus (§ 28).

Related to the antithesis between order and disorder is the antithesis between male and female, a fundamental structure which Timarchus again breaks down. Timarchus is repeatedly described as a "woman"/"wife" in the speech (§§ 110–111, 185) both an indication of an unmanly acceptance of a passive role and an oblique hint at submission to penetration by other males. Especially significant is § 185, where Timarchus is described as having a man's body while committing a woman's offences:

> Will you acquit Timarchus, a man guilty of the most shameful practices? A man, with a male body, who has committed the offences of a woman? Which of you then, if he catches his wife in misconduct, will punish her? Who will not seem stupid, if he shows anger at a woman who does wrong according to her nature but uses as his adviser a man who had abused himself against nature.

This is however not just about specific sex acts but about gender stereotypes, as the context makes clear. It is natural for women to succumb to vices, because they lack the self-control of the male. This is a matter of *physis*, natural tendency. That, the passage implies with its assumption that a man will punish his wife for misconduct, is why men control women.

12 Hansen (1991) 137, Fisher (2001) 163–164.

This antithesis between order and disorder coheres with the antithesis between democracy and other regimes. Whereas other sources treat the primacy of law as something generically Greek,[13] Aeschines very early in his speech claims it as the exclusive characteristic of Athenian democracy (§§ 4–5). This is more than a sop to Athenian pride (though it *is* a sop to Athenian pride) as the most stable and successful Greek democracy. It also has the effect of turning the rift between Timarchus and law into a rift between Timarchus and democracy. This too is a theme that resurfaces later in the speech. People like Timarchus are to be found among those who serve tyrants and overthrow democracy (§ 191):

> No, unrestrained physical pleasures and a feeling that nothing is ever enough, these are what recruit to gangs of robbers, what fill the pirate ships, these are each man's Fury; these are what drive him to slaughter his fellow-citizens, serve tyrants, conspire to overthrow democracy. They take no account of the shame or the consequences for themselves; it is the pleasure success will bring which mesmerises them.

As should already be clear, the antithesis between law and lawlessness also overlaps with another, that between past and present. In this speech unlike law, which is continuous and unchanging, political behaviour changes over time. The past-present antithesis is a potent one, as Athenian comic playwrights and political speakers had found in the fifth century.[14] Political nostalgia is not peculiar to Athens but the Greek tendency to view the world in terms of decline, encouraged by Golden Age mythology, combined with dramatic change in the demographics of political activity during the fifth and fourth centuries created an audience especially receptive to contrasts between contemporary politicians and their superior predecessors. The contrast is made emphatically at § 25:

> And those public speakers of old, Pericles and Themistocles and Aristides (who bore a title quite unlike that of this man Timarchus—he was known as 'the just') were so decent that in their day this habit that we all practise nowadays, of speaking with the hand outside the clothing, was considered something brash and they avoided doing it.

13 Eur. *Med.* 238, Hdt. 7.102.1 (of Greece), 104.4 (of Sparta).

14 The picture is fuller for comedy, since we can trace the motif back at least to the mid 420s (See Ar. *Eq. passim* but esp. 190–194). Hard evidence for oratory is lacking before the fourth century but Lys. 30.28 indicates that the present-past antithesis is already active in political oratory by the beginning of the fourth century and presumable dates back earlier. I discuss this further in Carey (2015).

But the contrast was prepared at the beginning of Aeschines' account of the laws protecting public decency, discussed above. The account explicitly associates the nexus of laws constraining sexual conduct with the earliest phase of Athenian legislation (§ 6):

> Consider, men of Athens, how great a concern for decency was shown by that ancient legislator Solon, and Drakon and the other legislators of that period.

Solon's presence here is almost inevitable, given his role as as founder of the democracy according to the Athenian tradition.[15] Less inevitable is the presence of Drakon. The addition here reinforces the association of the sexual laws with the austere severity of an earlier age. The theme of antiquity recurs later in the anecdote of the young girl executed for unchastity in § 183 and the following account of the legislation dealing with women who allow themselves to be seduced (§§ 184–185), which are, like the laws governing male sexuality, attributed to Solon.

The contrast between past and present political styles more generally in § 25 serves as a general backdrop against which to set the arch example of the degeneracy of contemporary political life, Timarchus. The lesser politicians of the present age, among whom Aeschines includes himself and all his contemporaries ("this habit that we all practise nowadays") are inferior but not degenerate. They at least impose limits on their conduct; they are content merely to use hand gestures. The boundary marker between acceptable and unacceptable behaviour, both practical and chronological, implicitly shifts and in this respect contemporary speakers too join the politicians of the past when set against Timarchus, whose delivery as narrated by Aeschines involves extravagant gesture on a scale which shocks even an audience acclimatised to the more relaxed modern style (§ 26):

> While they for their part thought it shameful to speak with their hand outside their robe, this man here, not some time ago but just the other day threw off his robe and cavorted in the Assembly stripped like a pankratiast (ἐπαγκρατίαζεν) …

The conduct of other speakers is indecorous but not indecent. They are content to expose only their arms to public gaze. In contrast, at least according to Aeschines, Timarchus is prepared to expose his whole body to view. The

15 For Solon in this speech see Westwood (2013) 149–167, Farenga (2006) 333–339.

detailed implications of the metaphor matter here. Clearly the athlete's nakedness is important. Timarchus was not naked. Aeschines uses the Greek word *gymnos*, which, though it can mean "nude", is also used more generally to mean "undressed", that is, lacking outer garments. And in fact Aeschines says no more than that he threw off his *himation*. Whether even this is true is questionable. Cleon was notorious for hitching up his *himation* (*Ath. Pol.* 28.3), which was itself so audacious that one hesitates to imagine any Athenian politician going much further. It may be that Timarchus did no more than move around so vigorously that his *himation* slipped.[16] Or possibly in a variation on Cleon's technique he uncovered both arms fully. But the ambiguous term, combined with the metaphor, allows Aeschines to compare Timarchus to an athlete stripping for action, which would in the Greek world involve total nakedness. The hyperbole emphasises exposure of the body and attributes to Timarchus a level of undress grotesquely out of place amid the formalities of the Ekklesia. Aeschines did not have to choose the pankration. He could have opted for the wrestler or the boxer, both of whom performed as naked as the pankratiast. But the pankration unlike wrestling involved fighting on the ground. So it conjures up a vivid image of Timarchus rolling around. The pankration was also the least restrained of the Greek martial sports. So the metaphor nicely sums up the lack of restraint which defines Timarchus on the *bēma*, which in turn reflects the lack of restraint which characterises his life.

The emphasis on Timarchus' performance achieves a number of effects. In terms of the dynamics of the immediate occasion one aspect of Aeschines' characterisation of Timarchus is to create a psychological advantage. As prosecutor Aeschines speaks first. His presentation is designed to focus the minds and eyes of the audience on oratorical excess and encourage them to watch Timarchus critically. It is a kind of performative *dilēmmaton*.[17] If Timarchus opts for a demonstrative performance, it confirms Aeschines' description. If he opts for restraint, his performance becomes more pallid. For a seasoned political operator like Timarchus the kind of performative *prokatalēpsis* at work will not have an overwhelming effect. But it will be enough if it puts Timarchus off his stride.

This however is tactical. There is a larger strategic aspect to the engagement with performance. It allows Aeschines to create a visual bridge between

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16 Fisher (2001) 153.

17 In its literal sense *dilemmaton* is defined by Hermog. *Inv.* 6 as a figure of speech "when we ask our opponent two questions and are ready to answer either". The device (though possibly not the name) was recognised at least by the fourth century (Arist. *Rhet.* 1399a). But figures of speech are not the only way to catch the opponent on the horns of a dilemma, as Aeschines shows.

Timarchus' private conduct as alleged and his public life. Just how decadent Timarchus' oratorical performance was is no longer recoverable. The narrative of decline specifically in relation to extravagant delivery is a cliché.[18] But that does not prevent us from accepting that his oratorical performance was flamboyant and even that for some it was excessive. It is difficult to believe that Aeschines could invent a completely new public persona for someone who had been in front of the demos for years and ask his audience to forget all they knew. The effect of Aeschines' focus on Timarchus' oratorical style is to bring into the public sphere all the private misconduct alleged against him.[19] In his account of Timarchus' sexual history Aeschines repeatedly urges his audience to imagine for themselves the kind of depravity committed by Timarchus in private.[20] The link that he creates with Timarchus' unrestrained delivery ties the allegations of unseen incontinence to seen excesses on the *bēma*. In outdoing the worst excesses of modern political gesticulation it concretises the allegations of sexual incontinence, of profligate expenditure on food, drink and courtesans. The link is made explicit at § 189:

> Which of you is unfamiliar with the disgusting conduct of Timarchus? In the case of people who exercise, even if we do not attend the gymnasia, we can recognise them from a glance at their fit condition. In the same way we recognise men who have worked as prostitutes from their shameless and impudent manner and from their general behaviour even if we're not present at their activities. For if a man has shown contempt for the laws and for morality on the most important issues, he has a certain attitude of mind which is visible from his disorderly manner.

It also in associating Timarchus with physical exposure of the body, not just excess in language or gesture concretises the allegations of indecency. In particular, it focuses attention on Timarchus' body (§ 26), which was, he says: "in such a vile and shameful physical condition on account of drunkenness and other abuses that decent men covered their faces out of shame for the city, that we take advice from people like this".

We cannot hope to assess the accuracy of Aeschines' description of Timarchus' body. But Timarchus was by this time at least in his mid-forties, so past his prime. And as with oratorical style, so with appearance: Aeschines could

18 See Carey (1994b) 78.

19 So rightly Fisher (2001) 154.

20 §§ 41, 45, 55, 61, 70, 75, 176.

not plausibly invoke Timarchus' appearance against him, if he had retained the beauty of his youth into his middle years. So he will not be the handsome figure he obviously was in his youth. What Aeschines does is to advise his audience how to interpret what they see, when Timarchus takes the *bēma*. He invites the audience to inspect Timarchus' appearance and interpret the physical signs of age as signs of depravity etched on his body. Again the effect is to link what is unseen and alleged to the visual memory of the audience and what is seen in court and give autopsy the illusion of evidence.

The same physical attention is lavished on Demosthenes, again with the aim of concretising for the audience events unseen. Demosthenes appeared for Timarchus as supporting speaker in this trial (§§166, 173–176) and Aeschines takes some pains to undermine him in advance (as well as Timarchus) and to suggest that he too should be facing the same kind of charge as Timarchus. Demosthenes was already a formidable speaker, though he lacked Aeschines' power of delivery, and Aeschines needs to put him on the defensive. Aeschines' strategy overall is to try to taint all of Timarchus' team of supporters with the alleged crimes of Timarchus (§§194–195).[21] But Demosthenes as the most formidable, and himself an accuser of Aeschines in a separate action arising from his *euthynai*, is singled out for special treatment. He shares all of Timarchus' excesses. Like Timarchus he has squandered his inheritance and then set about using illicit activities to make good his losses (§§170–171). He too is an enemy of democracy, being associated with the brutal murder of a man whose only provocation was to exercise his right to speak freely (§172).[22] He too is a man who has put his body to the service of other men (§§131, 181).[23] And here too Aeschines seeks to orchestrate the audience reaction to Demosthenes by indicating how they should interpret what they see during the trial (§131):

> If someone were to remove these smart robes of yours and the soft tunics in which you write speeches against your friends and carry them around and place them in the hands of the judges, I think that, if someone were to do this unnanounced, they would be at a loss whether they were holding the clothing of a man or a woman.

21 The strategy is especially visible in relation to Hegesandros, who is alleged to have been threatened by Aristophon with exactly the action which Aeschines has brought against Timarchus (§64) and who is presented like Timarchus as the "woman"/"wife" of another man (§111).

22 For this case see D. 21.104 with MacDowell (1990) 328–330.

23 He is even in §163 imagined as pimping for Timarchus.

Like Timarchus,[24] Demosthenes is presented as more female than male. Aeschines invites the audience to inspect Demosthenes carefully for signs of deviancy as he speaks, not like Timarchus in letting his clothing slip as he speaks but in wearing delicate fabrics unbecoming in a man. This is an ingenious smear tactic, since nobody in the audience will be close enough to touch Demosthenes' clothing to test its thread and weave, while we can be reasonably sure that Demosthenes will not be wearing poor fabric, so that the visible quality of his clothes will give some substance to the allegation, at least for anyone minded to believe it.

All this excess, depravity and indiscipline represents one side of the contest. Against this Aeschines musters both his reconstruction of the tenor of Athenian legislation about sexual conduct and some powerful symbols of discipline, with anecdotes about the Areopagos, the ancestors and Sparta. But one of his most powerful cards is his own performance in his presentation of the case. He starts the speech with a cliché, the assertion that he has been forced to come to court by his opponent, coupled with another, that he has not brought a public charge against anyone or prosecuted anyone at his audit (*euthynai*) at the end of a period of office (§§1–2):

> Never before, men of Athens, have I brought an indictment (*graphē*) against any man or persecuted him at his final audit; no, I have in my opinion shown restraint in all such matters. But since I could see that the city was suffering serious damage from this man Timarchus, who addresses the Assembly illegally, and since I am personally the victim of his malicious prosecution (just how, I shall explain later in my speech), I concluded that it would be utterly disgraceful not to intervene in defence of the city as a whole, the laws, you and myself.

Such a statement from a prominent politician is remarkable in a culture where the courts where regularly used to settle political disputes. It must be true that Aeschines has not taken the initiative in a public action. The speaker is highly visible and so a blatant misstatement will be recognised at once for what it is by the hearers.[25] But it is not enough to note the commonplace and move on. The opening sets the scene for the two contrasting characters in Aeschines' version of the court contest. The key concept in all of this is restraint. Aeschines says

24 §§110–111, 185.

25 However, the careful wording avoids saying that he has not appeared in court before, leaving room for involvement as witness or supporting speaker.

literally that he has shown himself *metrios*, "modest", "moderate". He opposes the systematic excesses of Timarchus with his own self-control. The emphatic statement at the outset is no accident. Aeschines, when on trial himself three years later, defines this speech (2.180) as a "summons to virtue/self-control, *sōphrosynē*" (in response to Demosthenes' stinging remarks about the trial of Timarchus). *Sōphrosynē* and cognates occur no fewer than 42 times in the three surviving speeches of Aeschines, as often as in the whole collection of public speeches, symbouleutic and forensic, within the Demosthenic corpus. Evidently it was a watchword for Aeschines. But no fewer than two thirds of those instances (28) occur in the speech against Timarchus. It is a concept which links all the praiseworthy characters and forces (including the laws of Athens, § 20) and a quality which is explicitly denied to Timarchus (§ 3). From the outset therefore Aeschines offers himself as the diametric opposite of his opponent. The persona is reinforced by the moral pronouncements about the laws, about politicians past and present, about Sparta and early Athens. Content and biographical claim go hand in hand. And what is not said is as important as what is said.[26] Aeschines insists at the outset that he is an innocent victim of malicious prosecution by Timarchus. And he promises to return to the issue. But in the version we have he never does. This could be the result of a post-trial redaction of the speech. But the failure to talk about himself fits his strategy so well that it would be wiser to see this unrealised *prolēpsis* as calculated. The insistence that this prosecution is retaliatory rather than the initiation of hostilities helps to generate goodwill at the beginning of the speech. But Aeschines' silence about himself subsequently reinforces the sense of moderation. This is not personal; it is about Timarchus and Athens, not about Aeschines and Timarchus. In the same way there is only a single reference to the real political contest behind the current trial, the struggle to control policy in relation to Philip of Macedon, in § 174, and there not about Timarchus but about Demosthenes' boasts:

> That he will summon such loud and hostile heckling from the judges by dragging in my political speeches and criticising the peace which was brought about through me and Philokrates that I will not even turn up

26 "Is there any point to which you would wish to draw my attention?"
"To the curious incident of the dog in the night-time."
"The dog did nothing in the night-time."
"That was the curious incident," remarked Sherlock Holmes.
Conan Doyle, *Silver Blaze*.

> in court to defend myself, when I submit to audit for my service as envoy; I'll be content if I receive a moderate punishment and am not condemned to death!

The speech likewise has little to say about Timarchus' policies, in contrast to his behaviour, personal and political. Political differences are sidelined.

The same element of restraint can be seen in Aeschines' active presentation of the case. Though he insists several times on his moderation, thus linking his conduct in the past (§ 1) with his conduct in the present trial (the key word is *metrios*, §§ 3, 39),[27] his moderation is not so much asserted but presented through the character projected throughout the speech. There is a studied magnanimity in his introduction to the account of Timarchus' career, where he readily excludes all activity when Timarchus was a child (§ 39), and where he edits his drafting of the depositions for reluctant or potentially hostile witnesses (§ 45, 67). He is emphatic about the desire to avoid giving offence to third parties unconnected with the dispute. So in § 41, having identified Misgolas as an enthusiast for homoerotic relations, he adds that the description is not meant to be vulgar (*phortikos*) but is intended to help the judges to identify him (disingenuously, since the description is not needed and serves more to establish the plausibility of Timarchus' sexual activities more firmly in the minds of the judges). He is careful (§ 136) to avoid seeming to condemn all beautiful young men who have attracted lovers alongside Timarchus (though again of course it suits his purpose to set up this group too as a damning contrast to his opponent). And when he speaks of people whose behaviour he can condemn alongside Timarchus (§§ 154, 165) he is pointedly reticent in order to avoid making enemies. This is a man who avoids quarrels, almost (insofar as the term can be used of a politician) an *apragmōn*. And he makes a show of working hard to avoid mirroring the indecency of Timarchus' conduct. He opens with an elaborate apology for the offence his topic may cause, while pointedly transferring the responsibility to Timarchus (§§ 37–38):

> I ask you, men of Athens, to pardon me if, when forced to speak of activities that by their nature are distasteful but have been practised by this man, I am induced to use any expression that resembles Timarchus' actions. It would not be fair for you to criticise me, if in my desire to inform you I were to use rather plain language, but rather criticise this man, if he has actually led such a life that anyone describing his behaviour is unable

27 *Metrios* is a favoured term in this speech, occurring no fewer than 10 times.

> to say what he wants to say without using expressions of this sort. But I shall avoid doing so to the very best of my ability.

As his account progresses, when finally he affects to feel compelled to speak bluntly, he does so with reluctance and exasperation (§ 52):[28]

> But if, ignoring these wild men, Kedonides and Autokleides and Thersandros, into whose houses he has been taken to live, I remind you of the facts and demonstrate that he has earned his living with his body not only at the home of Misgolas but in the house of another and then another, and that he went from this one to yet another, then it will be clear that he has not only been a kept lover but (and by Dionysos!—I do not think I can evade the issue all day) has actually prostituted himself.

As can be seen, from first to last the speech enacts restraint. So though we learn very little of a personal nature about Aeschines, a single core feature emerges, his moderation, which is not (usually) stated but practised from beginning to end by things said and unsaid. Aeschines contrives while saying very little about himself to create a coherent, compelling and continuously enacted persona. It is important here to remember what we know about Aeschines' background. He had trained as an actor and (though Demosthenes never tires of mocking him for his early career[29]), he will have known how to match this solemn persona with the right pace, tone of voice and timing. So we can be sure that the prosecutor's moderation was not merely embedded in the implicit character portrayal but enacted visually and aurally. This brings me to his strongest single performative moment.

As I noted above, Aeschines contrasts the restraint of past politicians with those of the present at § 25:

> And those public speakers of old, Perikles and Themistokles and Aristides (who bore a title quite unlike that of this man Timarchus—he was known as 'the just') were so decent that in their day this habit that we all practise nowadays, of speaking with the hand outside the clothing, was considered something brash and they avoided doing it. And I think I can offer you convincing and solid evidence of this fact. I am certain that you have all sailed to Salamis and have viewed the statue of Solon, and you yourselves

28 Cf. also §§ 55, 70.

29 D. 19.246, 337, 18.261–262.

> could bear witness that Solon stands in the Agora on Salamis with his hand inside his robe. This, men of Athens, is a representation and a reminder of the posture that Solon in person used to adopt when he spoke to the Athenian people.[30]

Despite Aeschines' explicit inclusion of himself among the inferior politicians of the present (itself a measure of his modesty), the message in performance was more nuanced. We know from Demosthenes (19.251) that Aeschines when speaking of the statue of Solon "assumed the pose" (*plasas to schēma*) which he described, which must mean not just that he put his hand in his robe but that he imitated the posture of the statue. And that of course included standing quite still in the manner attributed to Solon. The gesture was needed for practical reasons, since the statue was on Salamis and he could not assume (unlike statues in the Agora) that all or even most of his hearers will have seen it, even though he invites them (by a variation on the celebrated "everyone knows" *topos*) to pretend that they have.[31] But it also has a further effect. The appeal to Solon at the beginning of the speech, combined with the appeal to Solon as a model in action of the decency which Aeschines is championing in the speech, aligns Aeschines' project with Solon and with the traditional values he has evoked since the beginning of the speech. But the visual appeal to Solon goes further in aligning Aeschines personally with Solon in terms of personal *ēthos*. It helps to reify the issues facing the court by generating a very visual

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30 The text of D. 19.255 may be taken to suggest that Aeschines' impersonation of Solon also included the wearing of a hat. This in turn relates to the story told by Plutarch (*Sol.* 8.1–2) that Solon feigned madness in delivering his poem denouncing Athenian failure to fight for Salamis and in so doing burst into the Agora wearing a traveller's hat (the poem presents him as herald). For the legend and possible interpretations of Demosthenes' words see MacDowell 2000, 311 and Noussia-Fantuzzi 2010, 203–204. The issue is too complicated to discuss here; and I do not have an answer. But we should resist any attempt to elicit from Demosthenes' words a further element of Aeschines' impersonation of Solon in the Timarchus trial as involving the actual wearing of a hat. I incline to believe (but cannot prove) that the story told by Plutarch was already current in the fourth century and that Demosthenes envisages the possibility of Aeschines going further and pretending to be Solon by wearing the hat too, but does not present it as fact. If a hat was part of Aeschines' staging of Solon, Demosthenes could scarcely have let such an overtly histrionic gesture go unmocked in a passage which makes fun of Aeschines' self-important performance.

31 *Rh.* 1408a: "The audience are also to some degree affected by the device which the speech-writers use to excess—'who does not know', 'everyone knows'. For the hearer agrees out of embarrasment, so that he will share the knowledge of all the rest".

clash between Aeschines and his opponents. The contrast is most marked between the still and dignified posture of the prosecutor and the oratorical acrobatics ascribed to Timarchus in § 25. But the manly restraint also offers an effective contrast to the effete Demosthenes whose clothing is described later in the speech. The antitheses which have formed the bedrock of the speech thus coalesce in the seen persons of the litigants. We know from Demosthenes that Aeschines had an impressive speaking voice.[32] So his implicit presentation of himself as a moral exemplar will have been underscored by solemn and dignified delivery at this point. He is careful not to lay any explicit claim to being a successor to Solon. Any attempt to claim to be the political heir to the mythologised founder of the democracy would be very risky. Aeschines encourages the audience to make the connection but only by implication. The implication was not however lost on Demosthenes, who pointedly attacks Aeschines for mimicking the outward gestures and not the moral integrity of Solon. Demosthenes also sneeringly replies in 343 that the statue was a relatively recent dedication and had no bearing on the actual posture of Solon (19.251–252). But the fact that he dwells on Aeschines' use of Solon there, and specifically on the imitation of the posture, indicates that Aeschines' posture worked on the audience, or at least that Demosthenes thought it did.

This is a cleverly crafted speech, which shows an astute appreciation of what is needed to stretch a very limited body of evidence and obtain a favourable verdict in a demanding case. It makes very effective use of Aeschines' sense of theatre, not in the superficial and potentially counter-productive sense of display or posture (though there is a little of that), but in the sense that it makes excellent use of the trial as a live occasion in which the parties are under the active scrutiny of their audience. The message presented, both about the past of the accused and about the ethical and socio-political issues at stake for the *polis*, coheres effectively with what the audience see (or are persuaded to see) and hear in the physical appearance and the behaviour of the participants. The political and rhetorical style of the accused is made to serve as an analogue of his alleged contempt for limits and norms both in his private and in his public life and this is firmly tied to his appearance, so that his alleged character becomes not just a narrative but (or at least so Aeschines would have us suppose) a reality seen and acted. The speaker in opposition offers an opposing model in his own moderation. The character projected by a litigant always has a dramatic dimension, in that regardless of its accuracy as a depiction of the real man it is always a persona adopted to serve the immediate purpose; its job is

32 D. 19.126, 199, 206, 337, 18.127, 259.

not to reveal but to convince. The more vivid and coherent the presentation, the more persuasive the persona and the greater the sense that we are witnessing something real. And the more subtle the presentation, that is, by speech acts or stylistic features which display the character rather than statements which simply affirm it, the more it resembles actuality rather than contrivance. All this can reasonably be described as a verbal enactment of character. When this verbal enactment is reinforced by tone, pace and gesture, as we can believe with some confidence they were in this case, the effect is both powerful and (as the verdict showed) effective.

CHAPTER 16

Narrative and Performance in the Speeches of Apollodoros

Konstantinos Kapparis

Introduction

In 427 B.C. a dramatic debate took place in the Athenian Assembly with many lives at stake. In the spell-binding narrative on the fate of Mytilene, which had revolted from the Empire while Athens was engaged in the great war with Sparta, Cleon who was passionately advocating the complete destruction of Mytilene, the execution of all men, and the enslavement of women and children, makes an appeal to the emotions of the audience, while his opponent pleads for the salvation of Mytilene with rational arguments and cold-blooded logic. Cleon's attempt to agitate his audience is effected through a sharp critique of democracy for its inability to defend itself against its enemies. Among others, Cleon chastises the citizens for making decisions based on appearances rather than substance, and accuses them of behaving like the spectators in a theatrical performance, watching rather than listening to the speakers.

> But you are responsible because you are instituting a bad contest (κακῶς ἀγωνοθετοῦντες). You are accustomed to be the spectators of words (θεαταὶ μὲν τῶν λόγων), and a passive audience for the actions (ἀκροαταὶ δὲ τῶν ἔργων), making decisions about the feasibility of future actions on the basis of fine speeches, and when it comes to past actions you do not consider as more reliable what actually happened, but rather what you heard from the speeches of skillful accusers. And you are supremely apt at being deceived by novelty speeches (καινότητος μὲν λόγου), while you are unwilling to follow the voice of experience, because you are slaves to every piece of trendy nonsense, and contemptuous of anything traditional.[1]

The language is borrowed from the theater. The debate in the assembly is an *agōn*, a dramatic contest, and the citizens in the Assembly are acting like

1 Th. 3.38.

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the judges (ἀγωνοθετοῦντες) in the Dionysia, awarding prizes (ἆθλα) to those who perform best during their speech, instead of judging the substance of the matter. They react like an audience in a play (θεαταί and ἀκροαταί), and not as a political body with the power to vote on important matters. Politics and the dramatic stage have been fused, while real-life decisions and the theater seem equally real to the Athenian public. The audience of a speech assumes the role of a spectator paying attention to the performance, the presentation of the arguments rather than the essence, and like a theatrical audience bonds or is alienated from the characters on the rhetorical stage, reacts emotionally, can be manipulated by a skillful orator, and reach a verdict on the basis of which performance was more successful and popular.

The concept of oratory as performance sharing a significant array of elements with the theater was well understood by the Attic orators and ancient rhetoricians. They were undoubtedly conscious of the fact that their speeches were not simply intended to be read, but to be delivered before a live audience in real time, and tried to control the emotions and reactions of their listeners through several sensory and cognitive techniques, from delivery, tone of voice and a series of theatrical gestures intended to surprise, to more subtle means of manipulation appealing to their fears, prejudices, cultural values and social bias. In their works we find numerous clues, which allow us to partially reconstruct the intended performance effects and develop some appreciation for the broad array of techniques employed to appeal to juries and influence their verdict. It is not always easy to disentangle the terms "performance" and "theatricality" in the Attic Orators, and a detailed study of their differences would be beyond the scope of this study.[2] As so many of the original performance elements have now been lost for us, inevitably theatricality is more visible through clues in the text, while we can only imagine essential performance elements such as diction, rate, vocal expression and inflection. In this study it is my contention that, to the extent which textual clues allow, the speeches of Apollodoros are particularly suitable for the study of performance elements in Attic oratory, as their author deliberately and consciously placed much emphasis upon the performance of his speeches, and has left for us rich clues which allow us to appreciate the techniques which he employed to influence his audience, beyond the force of his words.

2 For a more detailed discussion on the content and function of these terms see Davis and Postlewait (2003); Palmer (2011) 1–6.

1 Legal Narratives

Of all aspects of Apollodoran oratory the narrative is the most significant and the most intriguing. While previous scholarship considered the central role of the narrative as a means of persuasion in his speeches to be a flaw, modern legal literature and narratology strongly suggest a reappraisal.[3] Ultimately no form of proof, ancient of modern, can be effective outside the context of coherent narrative, and what persuades the judges is not some piece of forensic evidence or a logical argument on their own, but the way these pieces come together to form a believable story. These principles were thoroughly understood by Apollodoros, as his handling of the narrative as the means of persuasion is supreme, intentional and greatly varied from speech to speech, as it best suits the needs of each case. The subject has never been studied in full, and this is not the place for a complete study of the complex techniques that Apollodoros employed in his long career as an orator for the construction of legal narratives. Here it will be sufficient to make some observations about the performing aspects of the Apollodoran narrative.

The technique in the construction varies significantly from speech to speech, as one might reasonably expect when considering the time-scale, genre and specific objectives. The speech *Against Kallippos* was composed in the early 360's and the speech *Against Neaira* was composed in the late 340's, and while some of the speeches were for private debts the case against Neaira was a major public lawsuit motivated by politics involving some major players like Demosthenes and Euboulos.[4] The narrative of *Against Polykles* is the most striking in that it occupies the entire speech. Apollodoros here bothers little with proof, as there is very little to prove. The single objective is to demonstrate clearly and unambiguously that Polykles did not meet his obligations as a trierarch. If the orator succeeds in this objective, he can be confident that an angry jury will not spare the delinquent trierach, and that the punishment will be severe.

3 For a first approach to legal narratives see the brief, but thorough article of Greta Olson (2014) with previous bibliography.

4 Both Demosthenes and Euboulos appear as supporting witnesses for Apollodoros in 124–125. Although they testify on something very circumstantial, the invitation which Apollodoros addressed to Stephanos about the surrender of four slaves to give evidence under torture, the presence of the two old rivals in Athenian politics, this time united in their opposition to Stephanos and his pro-Macedonian politics, gives a clear signal of the political realignments which took place on the eve of the final round of aggressive exchanges between Athens and Philip, which culminated in the battle of Chaeronea, some two or three years after the case against Neaira reached the courts.

This is why the subtle manipulation of the emotions of the judges through vivid and purposeful ethopoiia, a nostalgic appeal to the life at sea, undoubtedly a common experience for many judges and intended to create a bond between the speaker and his audience, and the careful handling of the occasion are centrally important for the strategy of the orator to earn the trust and goodwill of the audience at a subconscious level. In this instance the orator does not need to argue how or why the failure of Polycles to meet his obligations was damaging for the city. Apollodoros chooses to pursue this objective through a vivid and coherent narrative designed to have a special appeal to the judges who had served at the navy and favourably dispose them towards his cause. In the course of this narrative, he relates in some detail the travels of his trireme in the northern Aegean over a period of a year and a half interspersed with fictitious dialogues and alleged conversations between the orator and his opponent. This enactment of alleged conversations between the speaker and Polycles, undoubtedly delivered with the appropriate gestural and vocal mannerisms, is intended to present Polykles in the worst possible light and successfully paint the portrait of a hybristic character. Polycles does not simply fail to meet his obligations, but he does so with distinct arrogance and complete disregard for the laws and the needs of the city. This narrative contains everything which a good play would contain: love, separation, a family death, personal drama, social anxieties, moral issues, betrayal and danger, and these elements were meant to function in a similar manner as they would in the theater, provoking certain reactions in the listener/viewer. Apollodoros wants the judges to become like the Thucydidean θεαταί λόγων and punish Polycles for his *hybris*. The crushing blow comes with the unorthodox way Apollodoros uses to close the speech. Instead of the customary pleas to the jury, the appeal to their emotions or the invocation to the gods, the speech ends with the testimony of the current syntrierarch of Polycles that the latter had not met his obligations towards him either. Apollodoros could have summoned this significant witness earlier in the speech, but in a very theatrical gesture he leaves the best for last. The purpose of this carefully staged testimony is to leave the judges with the lasting impression that Polykles has continued to treat his duty to the city with arrogant disrespect. The gesture puts this significant witness in the spotlight and ensures that his testimony will weigh heavily in the minds of the judges.

By contrast, the speech *Against Kallippos* has very little pure narrative, as there is not much to tell. However, there is much to prove and for that purpose Apollodoros offers a reconstruction of events on the basis of conflicting and confusing testimonies of witnesses, with the main participants engaged in fictional dialogue like actors in a play. This enactment of the events sounds

unrealistic and subservient to the purposes of court proceedings. One might be tempted to attribute this quality of the narrative to the inexperience of its author,[5] but a closer inspection of the circumstances under which this case came to court suggests otherwise. Pasion had only died a couple of years before, and Apollodoros now in his mid-twenties,[6] had to set aside the lifestyle of the rich playboy and undertake his responsibilities in the running of the family business. We should be in no doubt that in the immediate aftermath of his father's death he would be faced with countless claims and unpaid debts to the bank, and the speech *Against Kallippos* must be interpreted in this context. Given the circumstances Apollodoros had little more than hearsay to present to the jury. The speech is divided into three roughly equal parts. The first part is essentially a reenactment of the dealings of Pasion with Kallippos, and this part, where the orator needs to report the words, actions, thoughts and decisions of others, he basically turns into a mini-play. Direct discourse dominates this passage, and the two protagonists, Kallippos and Pasion, are presented as engaged in conversation over the core issues which gave rise to later proceedings. This dramatic reenactment of their conversations is critically important as a rhetorical device, as it adds a tone of authenticity to the version of events presented here. On account of this peculiar situation, where Apollodoros had become legally responsible for the actions and decisions of others, a way needed to be found to report events that happened in his absence, and yet to sound convincing. A theatrical dialogue, where his dead father was conversing with his opponent in court, provided the appropriate vessel.

In a much drier and more factual narrative the second part of the speech *Against Kallippos* offers the details of the current lawsuit and the events in which Apollodoros was part and was able to give a firsthand account. The final part of the speech contains a solid argumentation, where amid a few lapses to sarcasm the orator convincingly argues that if Kallippos had been owed any money, he should have claimed it from Pasion while the latter was alive, but since he did not, his claim must be false. Unlike *Against Polykles*, the speech *Against Kallippos* relies more on proof than narrative and employs per-

5 This is the earliest extant speech of Apollodoros composed within a couple of years from the death of Pasion (371 B.C.). Apollodoros never had to deal with the affairs of the bank, since his father and the team which Pasion had put together were looking after legal and financial matters. This team consisted of the capable manager Phormion, a former slave who would eventually climb his way to full Athenian citizenship, as Pasion had done once, and two main legal agents [...] who seem to be bringing cases to court.

6 Apollodoros was born in 394 and he tells us that his father died in the year of Dysniketos (371), while this speech was delivered around 369.

formance elements, gestural, vocal and cognitive, and dramatic reenactment in order to make up for the deficiencies of the story which Apollodoros could only report as a messenger, but not really as a participant or even as an eyewitness.

Apollodoros faced a similar problem in the speech *Against Timotheos*, but procured a significantly different solution, yet no less rich in performance elements. As in the speech *Against Kallippos* he had to deal with claims which originated in the days when Pasion was still alive, but unlike the young man who had to defend himself and the family business against a powerful and well-connected individual like Kallippos in 369, this time a more confident litigator in his early thirties was willing to take on a prominent Athenian politician, the general Timotheos. If Arnold Schaefer was right to date the speech to 362 (or later), then more than 10 years had passed between the time when the initial debt was created and the trial.[7] A straightforward narrative of events, which took place so long ago, might seem like a tall tale to a skeptical dicastic panel wondering why Apollodoros had to wait for so long before taking legal action. More spectacular tactics would be needed, and the speech would surprise and engage an audience in more than one way.

The speech could be used as a textbook case for the usage of indirect discourse in Greek. There are countless optatives of indirect discourse dominating the entire narrative section which relates the interactions between Pasion and Timotheos, but unlike the speech *Against Kallippos* where such interactions were dramatised through the medium of dialogue and direct discourse, here a

7 The alleged debts of Timotheos to Pasion were created in the final years of the latter's life, in the years of Socratides (374/3), Asteios (273/2) and Alkisthenes (371/1), as Apollodoros clearly indicates (49.6, 30, 60–62). There is scholarly disagreement on the precise date of the speech. In recent years Jeremy Trevett (1991, 21–27) has upheld the suggestion of Arnold Schaefer (1858, vol. 3.2, Beilage 140–143) that the speech should be dated to 362, while Edward Harris (1988, 44–52) has argued that it should be dated to 369/8. While it would be tempting to agree with Harris, because then the lawsuit against Timotheos and the ensuing trial would be within a reasonable time-frame from the creation of these debts and the death of Pasion (371/0), this dating depends upon the assumption that minors could testify as adults in Athenian courts. Pasikles, the younger brother of Apollodoros appears as a witness (49.42), but he did not come of age before 363, so if the case went to court in 369/8, Pasikles would only be 12 years old. However there is no attested instance of a citizen boy giving evidence in court, and most likely children would need to give evidence through their *kyrios*, like women. Apollodoros had a long memory (for example, the case against Stephanos on the will of Pasion was brought to court in 348, twenty three years after the latter's death), and the narrative consistently conveys the impression of events that happened a long while ago. There is also the distinct possibility that Timotheos was still absent from Athens in 369/8. All things considered the later date of Schaefer seems to be correct.

more subtle medium is employed, one which was familiar to audiences from the narratives of messengers on the Greek tragic stage.[8] The intended effect is a subliminal message to the audience that the discussions between Pasion and Timotheos have been related word for word, and that Apollodoros is offering a first-hand, accurate account of their conversations, exchanges and agreements.

The dominance of this feature in the first half of the speech makes all the more surprising the sudden turn to direct discourse in the end of section 39, the point in the narrative where Timotheos returns to Athens, and the two people who could hold him accountable for his debts, Pasion and Philondas, are both dead. Apollodoros addresses Timotheos in the second person saying τεθνηκότα κατέλαβες ἥκων παρὰ βασιλέως ("upon your return from the king you found him dead"). This marks the point of transition from the deals of Timotheos with Pasion, Philondas and others, to his dealings with Apollodoros and the events which led to the current trial. For this part of the narrative Apollodoros frequently addresses Timotheos directly asking questions or making comments in the second person singular. He would not be expecting an answer to these questions right away; Timotheos would have the opportunity to reply in his own speech, should he choose to do so. This shift from indirect discourse to direct address of the opponent in the second person marks the transition from the past events in which Apollodoros played no direct part and is only reporting from the accounts of others to the events in which he was personally involved and can give the jury a first-hand account, his own version of the truth. The purported dialogue with the opponent in the courtroom is intended to enhance the vividness of the presentation, and without a doubt the words addressed to Timotheos would have been delivered with the appropriate volume and intonation. Apollodoros again turns the courtroom into a stage, with the main protagonists engaged in a face-to-face dialogue the purpose of which was to lead to a revelation of the truth. The spectacular and unexpected transition from indirect to direct discourse marks the point where the audience would

8 One such example would be the narrative of the second messenger in Sophocles *Oedipus Tyrannus* (1237–1285), where the past indicative dominates the dramatic storytelling of the final demise of Jocasta and Oedipus, interspersed with optatives at the points where the oracles given to Laius and Oedipus are mentioned. The optatives are intended to convey to the audience a precise first hand account of what the oracles had predicted. Andreas Serafim points out another such example in the famously dramatic narrative on the capture of Elateia (D. 18. 169–173), where a series of verbal pointers have an unmistakable "tragic resonance" (Serafim 2015, 100) and are intended to "recreate the past 'tragedy' of Athens in the present" (Serafim 2015, 99). See also Webb (2009).

expect to begin hearing the actual truth and the final revelations, which were about to bring the resolution of the plot.

Much less pronounced is the manipulation of direct and indirect discourse in the speech *Against Nikostratos*, which chronologically comes between the previous two.[9] Among all extant Apollodoran speeches this one is the closest to a textbook case with many features of composition and style in full compliance with what ancient rhetoricians considered optimally balanced. Unlike the adventurous arrangements of the narrative in most Apollodoran speeches, *Against Nikostratos* has a very neat and orderly structure. After a brief introduction (1–4) comes a vivid, well constructed narrative (5–18), an almost equal in size and robust section of proof (19–28), and a brief but standard epilogue where the orator admonishes the jury not to accept the excuses and pity pleas of Nikostratos and his brothers, because they do not deserve any sympathy. The entire speech is sharp, convincing, emotionally charged but also constructed with watertight logic, outstanding *ēthopooiia*[10] and clear objectives.

The opening of the speech is unusual and effective. It is the only extant speech in the body of Attic oratory, which opens with financial data and figures, and this is an important part of the orator's strategy. His objective is to convince the judges that he has taken a great risk with this prosecution, while the reward, if he succeeded, would not be worth the risk.[11] This rather surprising gesture sets the stage for an unconventional vector of attack. Revenge was the primary motive for this prosecution and the orator does not attempt to disguise it under some euphemism or other. There is no talk of high moral principles, the best interests of the city and the laws or other such commonplace topics, which the orators typically use in order to sound as good, righteous citizens looking after social order. Instead, there is a dense narrative of the adventures

9 The broadly accepted date for the speech *Against Nicostractos* is c. 365.

10 I understand *ēthopoiia* to be a performance element, in some ways associated with the invention of characters in other literary forms, and perhaps no less fictional than character creation in a novel or a play. The characters created by the Attic Orators needed not be real; they only needed to look real and consistent.

11 An *apographē*, like other public procedures, carried the hefty fine of 1000 drachmas for a prosecutor who failed to get one fifth of the votes. On the other hand, since it was one of the procedures, which helped the state recover funds, the successful prosecutor was entitled to one third of the money which the city recovered. Apollodoros estimated the value of the slaves, whom he was seeking to recover for the state as part of the confiscated property of Arethousios to 250 drachmas. Thus if he succeeded he would receive a bit more than 80 drachmas, an insignificant sum compared to the 1000 drachmas fine he was risking to bring this prosecution. See also 59.16; Lys. 17.6; see MacDowell (1978) 166; Harrison (1971) 180–181, 211–217.

and sufferings of Apollodoros in the hands of the gang of Nikostratos and his brothers. The plot has more twists and turns than a modern movie, and *enargeia*, intended to bring these extraordinary events to life in the present, dominates much of the narrative. Rare images of the idyllic country life in 4th century Attica, which are so vivid that the listener could easily imagine being there, are interspersed with tales of pirates, slave traders, abductions, family feuds and attempted murder, while masters become slaves, friends become bitter enemies and trustworthy neighbors turn into gangsters. And in all this the themes of injustice, ingratitude, hate and vengeance constantly ring in the ears of the audience. A convincing and focused argumentation enhances the effect of the narrative, and the audience is left with the impression of an honest man talking to them straight. His objective to arouse indignation for Nikostratos and his brothers is fully achieved through this lively story, which brings to life in front of the eyes of the audience this intricate plot of deception and betrayal.

Even more exciting is the first third of the narrative in Apollodoros' best-known to modern audiences and longest speech delivered in the late 340's against the former hetaira Neaira, a woman whom he had never met in his life. He simply used her to injure her life-long partner for political reasons. He alleged that the two of them were pretending to be married even though the law forbade the marriage between a citizen and a foreigner. If he won the foreign woman herself would be sold to slavery, but more importantly, her citizen partner would be fined 1000 drachmas, which if he failed to pay, he would be disfranchised as a debtor to the state. This was the ultimate objective of Apollodoros and the political forces behind him, including Demosthenes and Euboulos, this time acting in unison as the now visible threat of Philip was uniting old enemies. The case was inherently weak, since Neaira and her partner Stephanos had never pretended to be a legally married Athenian couple. Neaira had accepted her position as the concubine of Stephanos, and the pair was doing nothing unusual as many Athenian men chose to spend their lives with concubines rather than take lawful wives. Substantial diversionary tactics would be needed, in order to turn the attention of the judges away from the weakness of the case, and Apollodoros puts on an amazing performance and comes up with a story that was going to become one of the best-known tales from classical Athens.

The first third of the story has all the standard features of a Menandrian plot. A slave girl becomes a prominent hetaira and eventually, after several misfortunes, she meets the love of her life, she is separated from him by an aggressive rival who is also madly in love with her, but in the end the bad guy is duped and the two lovers are reunited, and she even becomes his wife and

has his children. How much of this story is actually true, and how much is a fiction is impossible to tell. Apollodoros is talking about the remote past, events in which he was not involved at all, but unlike the manipulation of direct and indirect discourse, which he chose in *Against Timotheos* and *Against Kallippos* something more dramatic, virtually a play within a speech, is carrying the weight of the prosecution in *Against Neaira*. But perhaps no play should be performed alone, but rather as part of a trilogy, and the middle part of the narrative contains another plot, only this time with a different protagonist, the alleged daughter of Neaira.

When Neaira finally settles down with Stephanos as his concubine (or fake wife, according to Apollodoros), she becomes less important for the narrative, and after that she will only make a few guest appearances. Another woman now takes center stage, who allegedly was the daughter of Neaira; in reality she probably was the biological daughter of Stephanos from another woman, and only the step-daughter of Neaira. Her name was Phano, but Apollodoros alleges that her original name was Strybele, one fit for a slave, which was later changed along with her identity, so that she could pass as a citizen. This plot deals with two marriages, two divorces, one salacious tale of adultery and an allegedly illegitimate child in the backdrop of the Anthesteria, a merry festival in the city when the jars with the new wine of the year were opened followed by three days of celebration. As in the *Oresteia*, *Agamemnon* is the play of Klytaimestra, and *Choephoroi* the play of Electra, here too we have two successive plots, two plays within a speech where mother and daughter each take turns in the leading role. One cannot help but wonder whether the famous trilogy provided some inspiration for the narrative of *Against Neaira*, especially given the affinity of Apollodoros for 5th century literature, which manifests itself abundantly in the final part of the narrative, a long digression attesting the earliest case of extensive reliance of one classical author upon another.

In the third part of the narrative Apollodoros does not need to invent, rearrange or exaggerate. Instead he borrows from Thucydides one of the most memorable episodes of the Peloponnesian war, the initial attack, siege and destruction of Plataia, and the miraculous escape of 212 men who made it safely to Athens, while the remaining defenders of the city were put to death by the Spartans. This part amplifies the previous two sections of the narrative elevating the private affairs of a single family into an issue of historic significance which concerns the entire city. *Amplificatio* and citations from the classics of 5th century literature, usually plays, are rather customary in long public speeches. Their purpose was twofold: first they were meant to entertain and stimulate a tired audience which had been hearing the speaker go on for hours, and then they were tied to the main line of the argumentation to add depth and importance to

the case.[12] The short argumentation of the speech adds little to the case, other than the continuation of this theme of *amplificatio*. Apollodoros enhances the impact of the case by arguing that Neaira in her youth was the most depraved prostitute in the world, and unless she is punished a bad example will be set which might ultimately endanger the virtue and marriage chances of ordinary Athenian girls. Since we do not know the outcome we cannot tell whether this unusual cocktail of plots, dramatic historical events and scare tactics carried the day, but even the fact that there was a possibility to win such a case concocted out of thin air is a testament to the rhetorical skill of Apollodoros and his team.

The second longest speech of Apollodoros was written on behalf of someone else whose name we do not know, and concerns a case of false witnesses (ψευδομαρτυριῶν) brought against Euergos and Mnesiboulos, who aided a man named Theophemos win a case of assault (αἰκεία) against the speaker by giving a false testimony.[13] Unlike the technique of the speech *Against Nikostratos*, where proof and narrative are clearly and neatly divided, here they are mixed, as the orator is trying to provide proof for a series of details in a long and complicated affair verifying the facts as he mentions them one by one. In this respect the technique of the speech reminds us of Isaios, where the countless details of complicated inheritance cases needed to be checked one by one at the place where they appeared. The speech can be evenly divided into two parts.[14] The first part describes in some detail the background of the dispute which led to the quarrel between the speaker and his opponent, while the second part discusses the aftermath of the assault trial, which had gone

12 See for example the citation from Soph. *Ant.* 175–190 in the speech of Demosthenes' *On the False Embassy* (19.247) makes a point about patriotism in a speech where the opponent is accused of treasonous neglect of his duty to the city. In another famous account with several citations from the *Iliad* Aeschines, in the speech *Against Timarchus* (1.133–150), interprets the relationship of Achilles and Patroclus as a virtuous love affair. Immediately this is followed by a citation from the *Stheneboia* of Euripides (Fr. 672 Nauck) about fair love, which is going to be contrasted with shameful love affairs for money.

13 The style of the speech is unmistakably Apollodoran, but there is nothing to identify him as the speaker, and given the tendency of Apollodoros to speak about himself, his family and his associates, friends and enemies, it seems unlikely that he is the unknown speaker. Besides many of the details would fit with difficulty into the profile of Apollodoros and his family. It seems that either Apollodoros wrote the speech for a friend as a favour, or it is the only surviving example of the work of Apollodoros as a logographer for pay.

14 More precisely the structure of the speech is as following: proemium (1–3), narrative and proof on the dispute over the equipment (4–44), narrative and proof on the dispute over the assault and the false witnesses (45–75), recapitulation and epilogue (75–82).

against the speaker. Strictly speaking, the longer first part of the narrative is not relevant and could have been summarised in a single paragraph briefly describing the events which had led to the assault trial. However, this is the part which was expected to play very much in favour of the speaker, as in it he had the opportunity to present himself to the jury as a loyal and responsible citizen, who had unjustly suffered in the hands of a nasty and selfish liar like his opponent. This is the part which he hopes will turn the current jury against his enemy, and make them willing to punish Euergos and Mnesiboulos, his accomplices to the deception of the previous jury. The orator uses a number of techniques to establish a bond with the audience, based on vivid accounts of past events and common experiences, like the shortages in naval equipment which prompted the introduction of the law of Periander. He also brings before their eyes in vivid colours the humiliation of his otherwise arrogant opponent before the Boule.

In a rather familiar Apollodoran blend the speech contains much in terms of deception, fights, some physical, a kidnapping, and even a cold-blooded murder which goes unpunished in the end. In a climax which begins with a civilised exchange of words, escalates into a physical fight and culminates into homicide the narrative is built almost like a play, where the plot gets thicker and denser with every scene, and leads to the final act of a heinous murder, which in an unexpected twist, so scripted that it would fit well into a plot for the tragic stage, will remain unpunished for no other reason except strict legality and religious observance. The dramatic intensity escalates along with the development of the plot, beginning with soft tones in the beginning when the speaker is supposed to be having a civilised dialogue with his opponent and concluding with the horrific scene of the killing of an old woman, followed immediately afterwards by an arcane ritual of purification. For the explosive finale Apollodoros has reserved a special card. Following a technique similar to the speech *Against Polycles* he summons several witnesses who were enemies of Theophemos, to tell the jury in detail how they have been harmed by him, and how terrible a person he is. Sullying the character of an opponent is almost expected in the Attic Orators, but the technique of presenting significant witnesses to that effect as the closing act of the litigant's speech is typically Apollodoran. However, while in the speech against Polycles the final witness is the current syntrierarch of his and thus vital to the understanding of the case, in this instance the witnesses are summoned to testify exclusively on the character of Theophemos, and what they have to say will probably have no specific connection with this case. Their role is largely performative: by inviting them on the stage in this final act of his speech the litigant wishes to leave a lasting impression of the nastiness of his opponent as a person, like a bad taste in the

mouth of the judges which could prove more lasting and more powerful than any rational argument he could master.

2 Addressing One's Opponent

The skilled use of the direct discourse, with good measure and interspersed into the storyline, is a technique which to a greater or smaller degree all Attic Orators practiced, sometimes lambasting each other as Demosthenes and Aeschines did before the Assembly, and sometimes using it to convey subtle messages in the way that Apollodoros does in the speech *Against Timotheos*. The employment of direct discourse to address one's opponent has broad functionality: it could be used to criticise face to face, to harangue, to question and raise doubt about facts, to tighten the focus of the argument upon a specific point, to raise a philosophical question of significance for the case, to invite one's opponent to respond to a specific point, which he would rather evade or ignore altogether, and so on. Its functions are essentially as limitless as face-to-face human communication and its faithful imitations on the dramatic stage.

The use of direct discourse in the speech *Against Kallippos* is quite striking, as it is extensively employed in a single crucially important scene, while it is almost completely absent in the rest of the speech. Apollodoros is well aware of the fact that the judges would like to know how Pasion had dealt with the rapacious appetites of Kallippos. This is why he reenacts in direct discourse the alleged conversation between the two men when Kallippos demanded payment of the money left behind by Lykon.[15] Through this reenactment his aim is not only to bring before the eyes of the judges the conversation between the two men as it supposedly happened, but also to create a portrait, a psychological profile of the vile, arrogant, ruthless and fundamentally unjust nature of Kallippos, while at the same time portraying his father as a prudent and reserved man who understood well the nature of the beast and tried to deal with him effectively. Direct discourse is also used one more time in the speech in a brief exchange between Phormion and Kallippos, at the important moment where Kallippos for the first time lays claim to the money left behind by Lykon. Again the use of the direct discourse is focused and intentionally used at a critical junction of the plot.

The usage of the direct discourse in the speech *Against Nikostratos* is similar and equally sparse. There is only one instance of it in the entire speech at the

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15 D. 52.9–11.

critical point where Nikostratos is directly pleading with Apollodoros to lend him the money needed to buy his freedom, and the latter agrees to do so.[16] Here again, as in the speech *Against Kallippos*, direct discourse is employed as a device intended to shed light upon a critical point of the plot, and also as a means of illustrating the psychology of main characters. Nikostratos is presented as devious and deceptive, while Apollodoros gets one more opportunity to portray himself as the naïve and unsuspecting victim of the plots of Nikostratos and his brothers.

The distinct usage of indirect discourse in the speech *Against Timotheos* seems to have impacted the employment of direct discourse too. In the first half of the speech, where Apollodoros has skillfully used indirect discourse to relate to the audience the dealings and conversations between Pasion and Timotheos, direct discourse is completely absent. Then abruptly and unexpectedly Apollodoros addresses Timotheos in the second person (39: τεθνηκότα κατέλαβες ἥκων παρὰ βασιλέως), turning and talking to him face to face during the trial. This technique is employed again later on, where Apollodoros turns to his opponent to outline that the latter had acted the way he did because he was terrified.[17] A more conventional usage of direct discourse can be found near the end of the speech: here Apollodoros invites the judges to address Timotheos and ask him whether he took the disputed objects without returning them.[18] The direct discourse here serves as a stratagem, which allows the orator to sum up the facts of the case from his point of view, and put his opponent in the spotlight.

The speech *Against Polycles* contains the most extensive and elaborate usage of direct discourse in the corpus of Apollodoros. Through this medium the orator brings to life his numerous conversations with Polycles, and successfully portrays a recklessly arrogant man, who not only failed repeatedly to meet his obligations to the city, but he did so with sarcasm, defiance and ill humour. In the first occurrence Apollodoros reenacts a dialogue between two envoys of his and Polycles, while Apollodoros himself was still at the Hellespont. The high note of this exchange is a sarcastic comment of Polycles, a proverb making fun of the generosity of Apollodoros toward the city.[19] Of all elements building up the negative portrait of Polycles, this is certainly one of the most memo-

16 D. 53.11–12.

17 D. 29.50: σὺ δ᾽ ἐν τῷ μεγίστῳ· περίφοβος δὲ ὢν ἡγοῦ σοι μεγάλην ἐπικουρίαν ἀπολογίας ἔσεσθαι, ἐὰν παραμείνωσιν αἱ Βοιώτιαι τριήρεις, ἕως ἂν σοι ἡ κρίσις γένηται.

18 D. 49.63–64.

19 The envoys reported that Polycles laughing mocked Apollodoros, a new citizen of Athens, naturalised along with his father Pasion around 370 for generous gifts to the city. He

rable. The same can be said about the second occurrence of direct discourse where Polycles is portrayed as chastising Apollodoros for the lavishness of his expenses on the city. The argument of Polycles at this point is that trierarchs like Apollodoros spoil the crews and the city with their generosity, while others will not be able to live up to this standard. Through this Apollodoros not only successfully portrays his opponent as mean and stingy, but also himself as a very generous man, something which the judges should not forget when the time comes to vote.[20] Then Apollodoros reenacts his conversations with Polycles, where he was begging the latter to take over the ship. The next use of direct discourse is at the point where Apollodoros needs to explain why he is refusing to obey a direct order of the general.[21] Here the indirect discourse does more than simply explain the characters and events; it also brings to life the deeper motives of its own creator, and allows the jury to see why Apollodoros needed to take such drastic action.

In the speech *Against Euergos and Mnesiboulos* Apollodoros returns to a more familiar pattern, which we have seen in his earlier speeches. As he did in the speech against *Against Timotheos*, where he turned to face his opponent and directly addressed him, here too he turns and faces Theophemos supposedly to ask him about the disputed slave girl, who, according to Apollodoros, had been the reason why he lost the previous trial.[22] This is the lengthiest occurrence of this technique in the entire body of the Attic Orators. Apollodoros here essentially converts the speech into a dialogue with his opponent with the only difference that he does not expect Theophemos to stand up and start answering; he will be asking the questions and giving the answers himself. As in previous speeches this feature appears at the most critical point of the entire narrative, where he narrates the events of the previous trial before he starts telling the jury how the witnesses who had testified for his opponent had been lying. Apollodoros employs direct discourse three more times in this speech, in significant places. He supposedly reproduces the words of his opponent when the latter falsely assures him that there is no rush for the settlement of the debt created in the first trial.[23] Then he reports the words of his wife, who tried to

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mocked him with the proverb ἄρτι μῦς πίττης γεύεται· ἐβούλετο γὰρ Ἀθηναῖος εἶναι ("The mouse has just tasted the pie; for he wanted to be an Athenian citizen").

20 D. 50.34–35.

21 D. 50.48–49.

22 D. 47.14–17.

23 D. 47.50: 'οὐδὲν κωλύει', ἔφη· 'ἀλλ' ἐπειδὰν τὴν ναῦν ἀποστείλῃς, πόριζε καὶ ἐμοί ("no problem" he said; "when you send away the ship, then you can get me the money").

dissuade his opponent from seizing the household valuables.[24] The final occurrence in this speech is almost as lengthy as the first, and perhaps even more significant in terms of impact. While from a strictly legal point of view this point in the narrative, where he explains why he did not prosecute his opponent for homicide, is irrelevant, without a doubt it is expected to have significant emotional impact upon the judges. The orator suggests, without actually saying the words, that his opponents are cold-blooded killers, who should have been banished from the community lest they invite miasma and the wrath of the gods. In a familiar Apollodoran pattern[25] an appeal to the religious instincts of the jury is expected to influence the members of the jury when they are casting their vote in secret. The judges are invited into the arcane setting of a sanctuary where the ἐξηγηταί reveal the will of the gods and the sacred customs, which govern cases of homicide such as the one of the old servant. The orator hopes that the citation of the response of the ἐξηγηταί in direct discourse will leave a lasting impression upon the minds of the jury and severely prejudice them against his opponents.

As expected, there is no direct discourse in the second speech *Against Stephanos*, since it is a deuterology. Less expectedly, its usage in the longest speech of Apollodoros, *Against Neaira*, is rather sparse. There are only four occurrences, the three of them very brief, but as usual pointedly placed in important junctions of the narrative. In the first instance, Stephanos is begging Epainetos for money for the dowry of Phano, and there is only one brief sentence in direct discourse, which explains his reasoning: Epainetos should be generous because he has sexually used the woman in the past.[26] It is highly unlikely that Stephanos would have used such language to describe his own daughter, and this is precisely the ultimate functionality of the direct discourse at this point. It is intended to present even Stephanos, her fake father according to Apollodoros, admitting that she is nothing more than an alien hetaera. The next instance where Apollodoros uses direct discourse serves the same purpose, only this time it is that second husband of Phano who admits that she is an alien hetaera.[27] Again we should be in no doubt that Apollodoros is putting in the mouth of Theogenes words which the latter could have never

24 D. 47.57–58: κἂν περιμείνητε … τῆς καταδίκης.

25 See for example the lengthy and striking appeal to the religious feelings of the judges in the final section of the speech *Against Neaira* 126.

26 D. 59.70: σὺ δὲ καὶ κέχρησαι' ἔφη τῇ ἀνθρώπῳ, καὶ δίκαιος εἶ ἀγαθόν τι ποιῆσαι αὐτήν ("you have used the woman too, and you would be right to do something good for her").

27 D. 59.82–83; for the reasons why Theogenes could have never used these words see my note on Kapparis (1999) com. ad loc.

said. The most extensive and elaborate employment of direct discourse can be found near the end of the speech where Apollodoros recreates a conversation between Athenian men and their wives and daughters. This fictitious dialogue is supposed to explain in very clear and simple terms why it is very important for Neaira to be convicted.[28] Instead of presenting with lengthy rational and complex arguments the reasons why this case was brought to court, and what was its significance in the wider context of Athenian public and private life, the orator chooses instead to convey the same point in the format of an ordinary conversation with their own wives and daughters and explain the reasons why Neaira should be convicted. One more instance where Apollodoros probably used direct discourse rests upon a difficult textual point.[29] According to the text of the manuscripts, which I have accepted in my edition of this speech, Apollodoros abruptly changes from indirect into direct discourse and presents the god Dionysos directly speaking to the Athenian people to explain to them what his expectations were for the woman who was going to be the *basilinna* and his wife during the ritual of the Anthesteria. The intended message of the orator is that Phano by no means fulfilled any of these requirements, and was therefore a highly unsuitable bride for the god.

All of these instances suggest a very deliberate usage of direct discourse to bring to life critically important conversations before the eyes of the judges. The heroes of the episodes in the speeches of Apollodoros are speaking allegedly with their own voice to explain exactly what happened. Of course they describe facts and truths in a manner that serves the argument of the orator, and on many occasions this is precisely the point. The orator wants these characters to admit things which of course the real persons would have never admitted in a court, and to that effect he puts into their mouths words which they could have never said. In a manner of speaking direct discourse in these little episodes where the characters are actually presented as performing their roles, functions in the way well-lubricated joints would function in a machine. Its role is to connect the various parts of the narrative with flexible and yet strong bonds and to give to the entire body cohesion and higher functionality. Apollodoros makes his characters speak to each other, or directly converse with the opponent, because he understands the power of this technique for the

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28 D. 59.110–111.

29 D. 59.76. I have defended the reading of the manuscripts σοί, but Dilts follows previous editors who prefer the emendation of Schaefer θεῷ, on the grounds that this transition from indirect to direct discourse is too sudden. However I have argued there, and elsewhere more recently—Kapparis (2014) 121–122—that such sudden changes appear several times in the speeches of Apollodoros, and are a very characteristic technique of the orator.

members of a tired jury.[30] These little episodes add credibility and a similitude to real-life, and for that reason, even though they are rather sparsely used, their contribution to the legal narrative ought to be very significant.

3 Less Common Performance Features

The historic present, intended to present a past action as if it were happening at the present moment before the eyes of the audience (*enargeia*), appears several times in the narratives of Apollodoros, as it does in most classical authors.[31] More specific to this author is the use of strong images and language to capture the attention of the audience and leave a lasting impression. The scene of the cruel murder of the old woman over a cheap, ordinary cup in the speech *Against Euergos and Mnesiboulos* was designed to leave an unforgettable memory in the minds of the judges, and even though these two had not been prosecuted for her murder, through this vivid imagery they are essentially put on trial for that too. The subliminal message is that unless the judges punish these monstrous men, they will allow unpunished murderers to be polluting everyone with whom they come in contact.[32] Equally powerful are the images of Nikostratos when released from his captivity with the visible scars of the chains, or the attempted murder of Apollodoros in a stone quarry, in the hands of Nikostratos and his brothers.[33] Many more lively scenes intended to attract attention to certain facts are interspersed in the Apollodoran corpus. The disobedience to the direct but unjust orders of the general Timomachos to transport the fugitive Kallistratos, the mighty Timotheos begging Pasion to lend him some cups and mattresses for his distinguished guests, the vengeful damage of a rose-bush in the yard of Apollodoros by Nikostratos and his brothers, the public abuse of Neaira by her drunken lover Phrynion and many more such scenes add colour and make Apollodoran narratives memorable and lively. With such scenes the legal narrative is not just a dry account of past events, but more like a play evolving right in front of the eyes of the judges and containing scenes and events

30 See also Classen (1991) 195–207; Serafim (2017).

31 See for example 52.14; 50.47, 50; 53.5, 14, 17 al. Particularly interesting is the usage of the timeless historic present in 52.9 ὁ Λύκων τυγχάνει ὢν καὶ ἄπαις, speaking about a man who had died before the events that led to this trial had taken place.

32 This fear of religious pollution (miasma) of everyone who shared a roof with a killer drove much of the process in homicide trials, and the Athenian legal system took it very seriously. See Arnaoutoglou (1993) 110–135; Harris (2015).

33 See 53.8 and 17.

which although in the realm of possibility, they are still extraordinary in their intensity and character, and unforgettable for that.[34]

The speech *Against Neaira*, like most public forensic speeches, contains readings from previous literature; only in this case, very boldly, Apollodoros quotes not some lines from a revered poet like Homer or Sophocles but an extensive paraphrase from the *History* of Thucydides.[35] It also contains *ekphraseis*, with reference to two popular public monuments.[36] One was in Athens, a painting of the battle of Marathon in the Poikile Stoa, which surely every single member of the jury would have seen at some point or another. The other was located in the sanctuary of Delphi, and again was a monument that anyone who had ever visited the sanctuary of Apollo would certainly be aware of, as it was the primary Panhellenic monument celebrating the victory of the Greeks over Persia.[37] The references to these popular monuments undoubtedly serve as a bridge between the orator and his audience. As they recall the Marathon painting, they will also recall his narrative of the deserved citizenship award to the Plataians, contrasted with the undeserving Neaira, while a subliminal parallel between the arrogance of Pausanias and that of Stephanos and his concubine might also be suggested. Through the shared experience of these monuments Apollodoros is connecting with the judges, he is having their attention, and will use it to further his rhetorical ends.

4 Conclusions

We do not know whether Apollodoros had received any formal training in rhetoric and if so how much. We can extrapolate that the heir to one of the largest fortunes in the city had received the best education money could buy, and in this respect a training in rhetoric seems like a realistic possibility. Apollodoros could easily compose neat, well-balanced speeches in a manner that would earn the approval of the rhetoricians of later antiquity, as the construc-

34 See 50.45–49; 49.22–23; 53, 15–16; 59.32–33.

35 See 59.98–104. As far as we know, this is the first time that the great historian is quoted by another author, and it is the first time in a public forensic speech where a historian from the past is extensively quoted, instead of a poet.

36 For the difference between *ekphrasis* and *enargeia*, see Serafim (2015) 98. Serafim rightly considers *enargeia* one of the virtues of *ekphrasis*.

37 D. 59.94–98. The base of the building is still surviving in Delphi, while the bronze pillar with the names of the cities that took part in the Persian wars inscribed on it, can be seen in the Hippodrome of Constantinople. See Madden (1992) 111–145.

tion of the speech *Against Nikostratos* proves. However, most of the time he chose not to write with a standard, predictable technique, but rather to surprise the judges with a variety of strategies, each tailored to the needs of the particular lawsuit for which the speech was written. He was only in his mid-twenties when after the death of his father he had to fight a series of lawsuits in defence of the interests of the family businesses. Apollodoros had ample opportunity to learn what works and what does not in the court room, and his style as an orator and as an author was probably forged through experience, trial, error and success.

Throughout his lengthy career as a litigator he adopted many different styles and approaches, in order to tackle the needs of very different cases. However, some features of his oratory remain fixed throughout his career. His attention to the narrative as the primary tool for winning a case is consistent from his earliest to his latest speech. His skill in telling a good story to the jury incorporated a whole array of features intended to make it sound interesting, exciting, lively, likely, captivating and consequently convincing. These features are all to be found in a staged narrative, because they are part of *peripeteia*. So, the performative element here is to be found in the subconscious association (on the part of the audience) of the orator's delivery to a dramatic speech. One could never argue that Apollodoros neglected or ignored other means of proof, such as testimonies from witnesses, documents or rational arguments. He was aware that these were necessary and used them consistently and systematically. But as any experienced litigator, he was also aware of the fact that trials are not won because someone presented reliable evidence. He knew that trials are won when the evidence presented to the judges is well bound together into a convincing, captivating narrative, when the story seems to fit, to make sense, and the pieces of proof are coming together to corroborate it. His techniques, although they seem to differ from speech to speech, all have the same purpose: how to captivate the attention of the jury and win their empathy and emotional participation with a story which not only fits but is also entertaining and easy to hear.

The extensive employment for performance elements in the speeches of Apollodoros serves this dual purpose. First it is meant to enhance the credibility of the narrative. When he makes his characters converse with each other and he puts in their mouth exactly the words which he wanted them to say, presenting it to the jury as if they had actually said these words, he is trying to prove a point. However, at the same time by choosing this medium he keeps his audience alert and entertained. When he describes to them a painting which all of them had seen at some point in their lives, and most of them probably saw it nearly every day, his description also serves this dual purpose. In the first place he is using

the painting to make a point which is crucially important for the success of his case, namely to draw the difference between a deserved citizenship award and the illegal usurpation of this precious right, and thus focus the attention of the jury to his primary allegation that Neaira must be punished as a usurper of this right. At the same time this purpose is accomplished with the much-desired Ciceronian *venustas*, which can captivate an audience in its own right. Performance elements in the speeches of Apollodoros serve this dual purpose. Sometimes with subtlety and sometimes with blunt force they are put to work in order to make a point, to enhance a storyline, to present the orator's own version of events, to convince the jury that he is telling the truth, by gaining their empathy and involving them as participants in his story. At the same time they are intended to bring the jury to his side through more surreptitious means, through a shared life experience, an emotional appeal, and a theatrical gesture, a supposed reenactment of a scene or event that may have never happened. Apollodoros, like any experienced litigator, understood well that it is not enough to tell the plain truth. What mattered even more was how to say it. He understood that one may tell anything, truths, half-truths, or lies, and win a case if they were told as pieces of a convincing and captivating storyline capable of evoking strong emotions in a jury, and wining not only through a dry appeal to their reason, but also through a series of subtle and subliminal emotional and cultural associations.

CHAPTER 17

Public Performance and the Language of Antiphon's Speeches

Alessandro Vatri

1 The Speeches of Antiphon between Hypocrisis and Anagnōsis

The extant speeches of Antiphon constitute a homogeneous corpus in several respects. The three logographic speeches and the *Tetralogies* all belong to the forensic genre and deal with homicide cases. If we believe the traditional view—and, as Gagarin points out, the arguments against it are far from conclusive[1]—both groups of speeches are the work of the same author, and only differ as to their purpose and destination. Those of the logographic speeches are plain to see; they were composed for delivery in an Athenian court by real clients in actual trials. Those of the *Tetralogies* are more controversial, and perhaps are better identified negatively in the first place. These three sets of two prosecution plus two defence speeches were definitely not composed for real cases and were never meant to be delivered in front of a real jury. Due to their size and structure and to the distortion of Athenian law they could not serve as model speeches, and should rather be assimilated to the speeches that were delivered in competitive debates, the sophistic *antilogiai*. Such debates, which are alluded to in a number of sources (e.g. Plato *Protagoras* 336b7–d5, Hippocrates *On the Nature of Man* 1, and Thucydides 3.38), consisted of well-regulated exchanges of speeches propounding opposing views of a given topic before an audience.[2] The *Tetralogies* would be one of the few extant texts that exemplify this genre; however, written *antilogiai* (including the *Tetralogies*) are probably not to be regarded as transcriptions of the speeches that were performed in such verbal contests. Rather, they should be conceived of as texts that were meant to circulate in writing and to be read and studied at leisure, analogously to other sophistic writings.[3]

1 Gagarin (2002) 62.

2 Thomas (2000) 252–253 and Benitez (1992) 244.

3 Gagarin (2002) 22, 31, 52, 103–105. Kennedy (1999) observes that the *Tetralogies* are "examples of a form of rhetorical instruction which flourished in Athens". On the sophistic practice of

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On this account, the two categories into which the speeches of Antiphon fall would also be distinguished by the type of performance and reception for which the texts were envisaged. In Isocratean terms, the logographic speeches may be regarded as λόγοι λεγόμενοι, whereas the *Tetralogies* would qualify as λόγοι ἀναγιγνωσκόμενοι (Isoc. 5.25–27). The *anagnōsis* to which Isocrates refers is a group activity, with a reader delivering a speech to an audience (τοῖς ἀκούουσιν, Isoc. 5.26) from a written copy. The study of a sophistic text might not have involved this type of oral performance and would probably have been a solitary activity (cf. Plato *Phaedrus* 22b, *Theaetetus* 152a, *Phaedo* 98b, and the Aristotelian *Problems*, 18.1 916b2–4).[4] At any rate, from the point of view of an author, both collective and individual *anagnōsis* were characterised by constraints intrinsic to written communication that needed to be taken into account. In the *Philippus*, Isocrates observes that speeches meant for reading are generally perceived to be unsuitable for debates on current matters due to their lack of persuasiveness. This is determined by a number of factors (Isoc. 5.26). Speeches that circulate in writing may fail to be timely: their composition may long precede reception, and circumstances might change in the meantime. In addition, when oral delivery is envisaged, writers of λόγοι ἀναγιγνωσκόμενοι have virtually no control on the way in which their speech will be performed. All paralinguistic elements (intonation, rhythm, flow speed and pauses) are left for the reader to supply, and there is no guarantee that this would be done properly (ἐπειδὰν γὰρ ὁ λόγος ἀποστερηθῇ τῆς τε δόξης τῆς τοῦ λέγοντος καὶ τῆς φωνῆς καὶ τῶν μεταβολῶν τῶν ἐν ταῖς ῥητορείαις γιγνομένων [...] ἀναγιγνώσκῃ δέ τις αὐτὸν ἀπιθάνως καὶ μηδὲν ἦθος ἐνσημαινόμενος ἀλλ' ὥσπερ ἀπαριθμῶν, κτλ. "when the speech is deprived of the prestige of the speaker and of the voice and of the modulations that are made in oratory [...] but one reads it without persuasiveness and without expressing any character,[5] but as if enumerating, etc.", cf. Isoc. 15.189). Texts that circulated in writing could still be the object of fully fledged oratorical delivery, with the effective use of voice and gesture (*hypocrisis*, cf. Arist. *Rh.* 1403b22–35),[6] but writers, arguably, should expect that *anagnōsis* could amount to plain and "untheatrical" delivery (or, possibly, no delivery at all). This awareness is reflected by Aristotle's distinction between the "written style" (γραφικὴ λέξις) and the "debating style" (ἀγωνιστικὴ

handing out written copies of speeches for their students to memorise cf. Aristotle *Sophistical Refutations* 183b38–39, see Schloemann (2002) 135, Kerferd (1981) 30–32, Cole (1991) 75, and Thomas (2003) 170.

4 Cf. Allan (1980) 244.

5 See Wisse (1989) 63.

6 Cf. Graff (2001) 24–25. On *hypocrisis* see Hall (1995) 46–49.

λέξις). The written style is especially suitable for *anagnōsis* (*Rh.* 1414a18–19), while the debating style is intrinsically connected to *hypocrisis* (*Rh.* 1413b8–9). Accordingly, the debating style is characterised by stylistic features such as asyndeton and repetition, whose 'theatrical' nature is manifested by the necessity to use varied and expressive intonation when delivering them (*Rh.* 1413b22, 29–31).[7] If we think about Isocrates' underlining of the high likelihood of bad or no *hypocrisis* in *anagnōsis*, it is easy to see why Aristotle mentions that "debating" texts, when written, look amateurish "in the hands" (ἐν ταῖς χερσίν, *Rh.* 1413b14–16). Aristotle adds that the written style is "precise" (ἀκριβής). This quality was regarded as a sign of written composition by Alcidamas (*On Sophists* 13), but its connection with "writtenness" may well be interpreted in the light of the difference in reception between texts meant to circulate in writing and texts that were personally delivered by their author or his client. In this perspective, precision is instrumental to the avoidance of linguistic and conceptual ambiguities and misunderstandings; written texts, after all, are unable to explain or, as Plato puts it, defend themselves (*Phdr.* 276c, cf. Isoc. *Ep.* 1.3).[8] Moreover, written circulation implies the impossibility for the author to rely on paralinguistic and extralinguistic contexts: prosody (in the absence of a fully developed punctuation system) and gesture are not explicitly encoded in the text, and all information must be conveyed by the wording of the text alone.[9] In this respect, the accurate expression of the meaning and its subtleties was more crucial, at least theoretically, than stylistic ornamentation (cf. Isoc. 5.27).[10]

On the other hand, these disadvantages of written texts could be compensated by the possibility for readers to peruse them at leisure, especially when reading in solitude (whether silently or orally).[11] In solitary reading, ambiguities and difficulties in the syntax or meaning may be identified, interpreted and resolved, and awareness may be gained of the structural properties of a text.[12] All of this was not quite possible for listeners of public performances where the written text was "invisible", such as those of forensic and political speeches.[13]

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7 See Vatri (2016) 382.

8 Cf. Kahn (1996) 377.

9 Cf. Graff (2001) 26, Russell (1981) 136, and Dufour and Wartelle (1973) 74 n. 1.

10 See Bons (1993) 164, cf. Graff (2001) 26.

11 For a discussion of the possibility of silent reading in classical Athens see Vatri (2012). For sources seemingly alluding to silent reading see Gavrilov (1997).

12 Cf. Slings (1992) 100.

13 Schloemann (2002) 137, Lavency (1964) 183–189, and MacDowell (2009) 3.

Public performance takes place in specific situations. If we think about forensic speeches, an author primarily envisaged (only) one precise context, that of a certain moment of a certain trial, before a certain tribunal, on a certain day, with a certain purpose, with a certain audience, a certain communication channel (oral), and social conventions and norms regulating the interaction between the speaker and the other participants in the communicative situation.[14] Tribunal audiences in classical Athens were rather large: private suits were discussed in front of 201 to 401 judges; for public prosecutions these could amount to 501, and political suits could be judged by up to 1501 judges. Important trials were also attended by numerous spectators,[15] and such big audiences could and would react noisily and possibly disrupt the delivery of the speech.[16] Stakes were high for both prosecutors and defendants, ranging from satisfaction and honour to property, political rights, and even life; forensic orators were subject to very high pressure. Speakers needed to take pains to ensure that the judges were persuaded by their speech, but persuasion presupposed that they would understand and internalise the contents of the linguistic message first. In this light, it is not surprising that central themes in the ancient Greek rhetorical tradition include how to speak clearly[17] and how to make sure that the audience remembers the key arguments of a speech.[18] As a counterweight to the constraints engendered by these necessities, authors of public speeches knew that the speakers (who might or might not coincide with themselves) would maximally exploit the "somaticity" and multisensoriality of oral performance:[19] *hypocrisis* implied the full exploitation of paralinguistic and extra-linguistic resources, on which *anagnōsis* could not count.

14 This list of "components" of a communicative situation is based on the sociolinguistic framework devised by Hymes for the "ethnography of communication", see Hymes (1974) 54–62.
15 Lanni (1997) and Mirhady and Schwarz (2011).
16 See Bers (1985) 43–44 and Thomas (2011).
17 Cf. Sluiter (2016) 46.
18 See Vatri (2015).
19 On this concept see Scollon and Scollon (1995).

2 Performance and Language

The different sets of constraints and resources that characterise *hypocrisis* and *anagnōsis* entail different sets of mental habits (or "conceptions")[20] in a writer as he composes a speech with either type of performance/reception in sight. If a text is meant for *hypocrisis* in a tribunal, which would be the case with the logographic speeches of Antiphon, the author could endeavour to make it as easy to understand as possible and to exploit stylistic devices that would make the arguments stick in the judges' minds. At the same time, authors could theoretically afford certain linguistic "licences", so to speak, which would be compensated by the "somatic" resources intrinsic to *hypocrisis*.[21] In this respect, a stylistic device like repetition ticks all the boxes, and its assignment to the ἀγωνιστικὴ λέξις on the part of Aristotle makes perfect sense: repetition may enhance—or at least does not disrupt—clarity and has an obvious mnemonic effect,[22] but, without proper delivery, it is stylistically reprehensible.

The conception underlying speeches for *anagnōsis* should not be expected to be the mirror image of that of speeches for *hypocrisis*. Even though clarity and memorability are not priorities, it does not follow that a speech composed for reading should avoid them. Writers of this type of speeches would have a wider margin for linguistic experimentation,[23] and could afford syntactic and conceptual obscurity: in Slings' words, "one can, after all, read a sentence through in one's own tempo, so a slightly more complicated syntactic structure is much less of a problem".[24] What is less affordable in texts meant for written circulation and plain *anagnōsis* is ambiguities of types that would only be resolved with the aid of paralinguistic and extra-linguistic elements (prosody and gesture)—which contributes to the need for *akribeia* in written texts. These include, for instance, the assignment of the correct referent to successive occurrences of the same demonstrative. This could literally be "guided" by physical deixis in *hypocrisis*, but only attentive consideration of the co-text would help resolving ambiguities in *anagnōsis*.

It remains to be ascertained whether these hypothetical conceptional differences are reflected in the language of the two groups of speeches of Antiphon. This possibility will be explored in the following sections.

20 For the notion of "conception" see Oesterreicher (1997).
21 Cf. O'Sullivan (1992) 47.
22 See Vatri (2015).
23 Cf. Gagarin (1997) 25.
24 Slings (1992) 100.

3 Linguistic Difficulty

According to Gagarin, one of the major linguistic divide between the *Tetralogies* and the logographic speeches of Antiphon is the greater "complexity" of the former, which he regards as an indicator of their "written" character.[25] Not only would structural and logical subtleties only be fully understood and appreciated by readers, but the syntax of certain passages would also be too hard to understand upon hearing even for an audience of native speakers.[26]

As we mentioned, clarity, both linguistic and conceptual, was a crucial requirement of forensic speeches and was considered central to persuasion itself.[27] If we wish to assess clarity and take it as a parameter for comparison between different texts, one of the risks that we may incur is basing our evaluation on our non-native "feel" for a dead language. Moreover, as mere readers of ancient texts, we lack all the extra-textual information that an ancient public speaker would have conveyed orally and physically to his audience—one of native speakers. Discussions of clarity in the ancient rhetorical handbooks are to be used with a grain of salt, since, being concerned with style rather than language, they may suffer from a prescriptive bias instead of being neutrally descriptive (and, at least as far as *Progymnasmata* are concerned, they may reflect written didactic practices); moreover, they often appeal to the native "feel" for the language.

In order to enter a native speaker's mind and reconstruct his or her perception of Classical Greek, we may seek assistance from modern research on language comprehension. When reading an ancient text we must bear two principles in mind. Firstly, language comprehension is an incremental process. As we humans encounter words, either in reading or listening, we tend to extract as much linguistic information as possible and to maximise the interpretation of the part of the utterance we have already perceived, without waiting for the utterance to be complete. Each word raises expectations for other words to follow, and satisfies expectations raised by previous words. Sometimes such expectations might be interfered with by intervening words.[28] Let us examine an example from the *Third Tetralogy*:

25 Gagarin (2002) 61, 105.

26 Gagarin (1997) 33–35.

27 Cf. Aristotle *Rhetoric* 1404b2, 1410b10, 25, *Rhetoric to Alexander* 30.5, Demetrius *On Style* 221.

28 For recent summaries of the state of the art in research on syntax processing see Levy et al. (2013) and Vatri (2017), Chapter 4. Research on Russian, a language that shares several

νενόμισται μὲν ὀρθῶς τὰς φονικὰς δίκας περὶ πλείστου τοὺς κρίνοντας ποιεῖσθαι διώκειν τε καὶ μαρτυρεῖν κατὰ τὸ δίκαιον

4.1.1

It is rightly established that those who judge cases of murder consider of the highest importance to prosecute and give evidence according to justice.

The first word, νενόμισται, is an impersonal verb which sets up the expectation for an infinitive. Such expectation is reinforced by the accusative τὰς φονικὰς δίκας, as well as by περὶ πλείστου. This prepositional phrase most often modifies ποιοῦμαι, as the table below shows:

περὶ πλείστου:	**Class.** **(up to 4th c. B.C.)**	**Hellen./Roman** **(3rd c. B.C.–3rd c. AD)**
ἡγοῦμαι	1 (Thucydides)	–
μελετῶ	1 (Thucydides)	–
ποιοῦμαι	46	42
ἄγω	1 (Herodotus)	1 (Diodorus Siculus)
εἰμί	6 (4 × Antiphon, 1× Andocides, 1 × Plato)	1 (Josephus)

In Byzantine Greek, besides ποιοῦμαι, περὶ πλείστου is used with ἡγοῦμαι, ἄγω, εἰμί, νομίζω, ἔχω, σκοποῦμαι, γίγνομαι, σπουδάζω, and quite often with τίθημι.

When τοὺς κρίνοντας is encountered, it could be interpreted as an argument of the expected infinitive (which would be a form of ποιοῦμαι). Possibly, τὰς δίκας could be reinterpreted as the object of this substantivised participle, or as a common direct object to both the expected infinitive and the participle. Next, the expected infinitive ποιεῖσθαι does occur. Up to this point, the sentence would be interpreted as "*it is rightly established that those who judge* (*them*) *regard the cases of murder as most important*". This sentence is complete and makes sense, and διώκειν would be completely unexpected. If two unarticulated present infinitives follow one another, they would rather be interpreted as coordinate than subordinate to one another. The latter, correct interpretation

typological features with Classical Greek, is particularly relevant for the application of models developed in experimental psycholinguistics to Classical Greek itself.

would force a reader to reanalyse the sentence; subsequently, τὰς δίκας should also be reinterpreted as the object of κρίνοντας alone. Reanalysis of previously parsed words is a cognitively demanding activity, and this sentence would have not been comprehended too smoothly by a native speaker when reading at first sight. The principle of incremental processing implies that ease of comprehension of a sentence depends on its internal structure, and on no such things as its mere size or hypotaxis alone: long and complex sentences may be as clear or obscure as any other utterance.

The other principle to bear in mind is that prosody can in many cases effectively disambiguate the syntax in listening. However, it is not mapped exactly on the syntax, and prosodic units do not necessarily correspond to syntactic units. Therefore, not all syntactic ambiguities can be resolved by speaking with the correct intonation.[29] What prosody *can* do is disambiguate between so-called left and right attachment (cf. Aristotle *Sophistical Refutations* 166a23–38, 177a33–39 and Theon *Progymnasmata* 130.12–13 describing ambiguities of this type). Let us consider the following example from *Against the Stepmother*:

σκέψασθε οὖν ὅσῳ δικαιότερα ὑμῶν δεήσομαι

1.21

Now, consider how much fairer my request to you shall be.

If we parsed this sentence incrementally, ὑμῶν could be interpreted at first as dependent on δικαιότερα, whereas it must be interpreted as an argument of the verb in final position (ὑμῶν δεήσομαι = right attachment, not δικαιότερα ὑμῶν = left attachment). A prosodic boundary (whatever its phonetic realisation was—a pause, a pitch change, etc.) between δικαιότερα and ὑμῶν would ensure that the genitive is assigned to the correct governor immediately, and not only when reanalysis would be induced by the poor semantics of the earliest interpretation of the phrase ("fairer than you"), which results only from the morphological and syntactic properties of the words of which it consists.

Bearing these principles in mind, we can now turn to analyse a sentence from the *Second Tetralogy* which Gagarin deems "almost incomprehensible"[30] even for an ancient Athenian "if the sentence was simply read aloud to him":[31]

29 See Shattuck-Hufnagel and Turk (1996), Wagner and Watson (2010), and a full discussion in McGillivray and Vatri (2015).

30 Gagarin (1999) 170.

31 Gagarin (1997) 34.

ἀπολύει δὲ καὶ ὁ νόμος ἡμᾶς, ᾧ πιστεύων, εἴργοντι μήτε ἀδίκως μήτε δικαίως ἀποκτείνειν, ὡς φονέα με διώκει

3.2.9

The law acquits us, trusting in which, which (*sic*) prevents to murder both unjustly and rightly, he prosecutes me as a murderer.

In this sentence the relative pronoun ᾧ is separated from its antecedent νόμος by ἡμᾶς, which may not possibly be mistaken for an alternative antecedent. Since the relative pronoun 'stands for' νόμος, the possibility that νόμος is interpreted as the subject of the participle πιστεύων, and of the whole relative clause, is ruled out. The appositive conjunct participle εἴργοντι agrees with ᾧ, from which it is separated by πιστεύων. However, there are no reasons to infer that the integration of εἴργοντι would have been difficult for a native speaker. Agreement shows clearly that it is to be constructed with ᾧ, and the entire phrase it governs would probably be uttered with a parenthetical intonation.[32] Some other prosodic boundary would guarantee that hearers construct the subsequent adverbs with the infinitive (right attachment) instead of εἴργοντι. The rest of the relative clause is arranged linearly, and the final verb is highly expected. In short, it seems unlikely that a native speaker would have found this sentence nearly incomprehensible upon hearing. It is us who might have trouble translating this sentence literally (if only in our heads, as we read), as the rather unattractive rendition I have printed here shows.

Conversely, Gagarin is right when he argues that hyperbaton "can also result in interlocking word order, sometimes to the point of confusion"[33] in passages like the following (from the *Third Tetralogy*):

ἀποκτεῖναι ὑμᾶς με πείθοντες

4.2.7

Persuading you to kill me.

Here, ὑμᾶς would most likely be interpreted as the object of ἀποκτεῖναι, and με as that of πείθοντες, which would give the opposite meaning of the intended one. Both accusatives must be reanalysed syntactically; this is a nice

32 See Shattuck-Hufnagel and Turk (1996).

33 Gagarin (1997) 29, 167.

example of σύνθεσις συγκεχυμένη (*Rhetoric to Alexander* 25, cf. Th. *Prog.* 82.34–35).

Gagarin maintains that "such expressions are confined to the *Tetralogies*"[34] and he is probably right. A case study on *Against the Stepmother* and the *Third Tetralogy*, two works of comparable length, has revealed no linguistic difficulties, as defined here, in the former. In the latter work, the sentence discussed above (ἀποκτεῖναι ὑμᾶς με πείθοντες) is the only one that would escape prosodic disambiguation. In the absence of prosodic information (i.e. in the reading comprehension condition), no difficulties at all can be reconstructed for the speech *Against the Stepmother*, whereas the *Third Tetralogy* totals a significantly high number of them (in three more sentences apart from the two discussed here, for a total of 5.70 reanalyses per 1000 words).[35] On these grounds, we can infer that it is likely that the *Tetralogies* were significantly more difficult to read than Antiphon's logographic speeches and, at the same time, that they were more difficult to read than to listen to.

4 Demonstratives and Physical Deixis

According to chapter 25 of the *Rhetoric to Alexander* (4th century B.C.), the sentence οὗτος ὁ ἄνθρωπος τοῦτον τὸν ἄνθρωπον ἀδικεῖ ("this man wrongs this man") is clear owing to the presence of ἄρθρα—a term that here indicates demonstratives.[36] Should these be removed, the sentence would become obscure (νῦν μὲν ἐγγενόμενα τὰ ἄρθρα σαφῆ ποιεῖ τὴν λέξιν, ἐξαιρεθέντα δὲ ἀσαφῆ ποιήσει). However, in some cases the opposite may happen (ἔσθ' ὅτε δὲ συμβαίνει καὶ τὸ ἀνάπαλιν).

The interpretation of this rather compressed passage is problematic. If, as the *Rhetoric to Alexander* suggests, a sentence like ὁ ἄνθρωπος τὸν ἄνθρωπον ἀδικεῖ is obscure in the first place, and is made clear by the addition of adnominal οὗτος to both nouns, it follows that the idea is that demonstratives help disambiguating the entities referred to by the subject and the object of the verb, even when the same demonstrative is used. Perhaps it is precisely the fact that the *same* demonstrative is used that might engender "the opposite", that is, that might make an otherwise clear distinction unclear. A possible reason why even using the same demonstrative to indicate different persons might

34 Gagarin (1997) 29.

35 See Vatri (2017) 235–238.

36 Cf. Schramm (2005) 204; Chiron (2002) 166 n. 434.

be a clarifying factor is that demonstratives may be accompanied by physical deixis of some kind, which would be especially effective when the persons mentioned by the speaker are real and present.[37] Conversely, using the same demonstrative to refer to different absent or unreal persons would be a bad idea.

Whether this interpretation is right or not, it is true that ambiguities may arise when the referent of a demonstrative changes and this change is not explicitly represented in the language.[38] Such changes can be communicated by the speaker by means of physical *deixis* in a context where the entities referred to are present, and this would be the case with this type of ambiguities occurring in forensic speeches. When they occur in texts composed for *anagnōsis*, such ambiguities require interpretation; this would also be necessary prior to group *anagnōsis*, which would allow the oral reader to use *hypocrisis* and "act out" changes of referent by means of his body language. Therefore, theoretically, this kind of ambiguities should be more at home texts conceived for *hypocrisis*, where they might even work as an effective cue for prosody and gesture in delivery.

Overall, Antiphon is rather accurate in his use of demonstratives in both the logographic speeches and the *Tetralogies*. In most cases, instances of the same demonstrative (by which I mean a specific gender and number of οὗτος, ἐκεῖνος, and ὅδε; οὗτος counts as a different demonstrative from οὗτοι and αὕτη) occurring without any linguistically expressed assignment of a new referent between them consistently point to the same referent.[39] Multiple οὗτος/οὗτοι/αὕτη/αὗται

37 Cf. Chiron (2002) 168 n. 442. On physical deixis and reference see Kibrik (2011) 46–47 and Wagner et al. (2014). On linguistic deixis see Bonifazi (2014) for a useful summary.

38 An explicit change of referent occurs in Herodotus 7.206, for instance: **τούτους** μὲν *τοὺς ἀμφὶ Λεωνίδην* πρώτους ἀπέπεμψαν Σπαρτιῆται, ἵνα **τούτους** (those with Leonidas) ὁρῶντες *οἱ ἄλλοι σύμμαχοι* στρατεύωνται μηδὲ καὶ **οὗτοι** (the allies) μηδίσωσι; "The Spartans sent off first the men with Leonidas so that, seeing these (*those with Leonidas*), the rest of the allies would advance and these (*the allies*) would not also side with the Medes".

39 Neuter demonstrative pronouns may refer to high-order entities (e.g. states-of-affairs or propositions) without a linguistically explicit referent reassignment. That is, τοῦτο alone may come to refer to "the fact which has just been mentioned" or "that which has just been said"; there is no need to make this explicit (e.g. with a relative clause like [τοῦτο] ὃ ἄρτι ἐρρήθη). As a consequence, I have not surveyed them in this study. On the other hand, when a neuter demonstrative pronoun in an oblique case follows an instance of the same pronoun in the same number and in the masculine (or the feminine genitive plural) ambiguity may arise, but this never occurs in Antiphon. At 5.16 neuter τούτων is followed by masculine τουτουσί, but the gender of the former is made explicit by its neuter governor: τούτων δεινότερα μηχανήματα. As Humbert (1960) 32 remarks, τοῦτο may also have

refer consistently to the same person(s), typically the speaker's adversary or adversaries, at 1.2, 1.12, 2.1.11, 2.2.13, 2.3.7, 3.2.10, 3.3.2, 3.4.6, 5.18, 5.25, 5.38, 5.84, 5.94, 6.16, 6.20, 6.21, 6.24, 6.26, 6.31, 6.40, 6.43, 6.41, and 6.44. The same applies to the corresponding forms of ἐκεῖνος at 1.3, 3.4.5, 4.3.4, 5.59, 5.61, 5.62–64, and 5.74. The logographic speeches contain two instances of abrupt referent assignment, which, as we mentioned, should not be problematic in texts composed for public *hypocrisis*:

> Ἐπίσταμαι δὲ καὶ τάδε, ὦ ἄνδρες, ὅτι εἰ μὲν **τούτοις** (the accusers) ἐμοῦ κατεμαρτύρουν οἱ μάρτυρες οἱ παραγενόμενοι, **αὐτοῖς** ἂν **τούτοις** (the witnesses) ἰσχυροτάτοις ἐχρῶντο καὶ πίστιν ταύτην σαφεστάτην ἀπέφαινον, τοὺς μάρτυρας τοὺς καταμαρτυροῦντας· τῶν αὐτῶν δὲ **τούτων** (the witnesses) μαρτυρούντων, ἃ μὲν ἐγὼ λέγω, ἀληθῆ εἶναι, ἃ δὲ **οὗτοι** (the accusers) λέγουσιν, οὐκ ἀληθῆ, τοῖς μὲν μάρτυσι τοῖς μαρτυροῦσιν ἀπιστεῖν ὑμᾶς διδάσκουσι, τοῖς δὲ λόγοις οἷς αὐτοὶ λέγουσι πιστεύειν ὑμᾶς φασι χρῆναι, οὓς ἐγὼ εἰ ἔλεγον ἄνευ μαρτύρων, ψευδεῖς ἂν κατηγόρουν εἶναι.
>
> 6.28

> I also know this, gentlemen, that if the witnesses who were present were giving testimony on their side against me, they would consider this very strong evidence, and they would display the testimony of these witnesses against me as clear confirmation of their case. But when these same witnesses testify that what I say is true and what they say is not true, they now tell you not to trust the witnesses who are testifying and say you should trust the arguments they make instead, though if I made such arguments without witnesses, they would accuse me of lying.
>
> transl. GAGARIN

> δεῖ δέ με καὶ ὑπὲρ Λυκίνου ἀπολογήσασθαι, ὡς ἔοικεν, ἀλλ' οὐχ ὑπὲρ αὐτοῦ (the speaker) μόνον, ὡς οὐδὲ **ἐκεῖνον** (Lycinus) εἰκότως αἰτιῶνται. Λέγω τοίνυν ὑμῖν ὅτι ταὐτὰ ὑπῆρχεν αὐτῷ (Lycinus) εἰς **ἐκεῖνον** (the victim) ἅπερ ἐμοί· οὔτε γὰρ χρήματα ἦν αὐτῷ ὁπόθεν ἂν ἔλαβεν ἀποκτείνας ἐκεῖνον (the victim),

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a cataphoric meaning and draw attention to what is about to be said. This usage possibly lies at the basis of the extrasentential use of τοῦτο μέν as a discourse marker, often (but not necessarily) contrasted by τοῦτο δέ (and vice-versa), on which see Dover (1997) 95. Combinations of τοῦτο μέν and τοῦτο δέ occur 22 times in Antiphon's logographic speeches but never in the *Tetralogies*, cf. Dover (1950) 50 and 56. They are frequent in Herodotus, not rare in Sophocles, and occur at least once in Aristophanes and Plato. Conversely, they are never found in Thucydides or Xenophon. Gagarin (2002, 61, 172) calls this an "oral marker".

> οὔτε κίνδυνος αὐτῷ ὑπῆρχεν οὐδεὶς ὅντινα διέφευγεν ἀποθανόντος ἐκείνου (the victim).
>
> 5.60
>
> So it seems I must defend not only myself but Lycinus too and show that their charge against him is also improbable. I can tell you that he is in the same situation as I am: there was no way he could get money if he killed this man, and there was no danger he could avoid if this man died.
>
> transl. GAGARIN

However, an ambiguous sequence of demonstratives is also found in the *First Tetralogy*:

> εἴτε ἄλλοι τινὲς ἕτερόν τι τοιοῦτον κακουργοῦντες ὀφθέντες ὑπ' αὐτῶν, ἵνα μὴ γνωσθῶσι διέφθειραν αὐτούς, ἅμα τῷ **τούτων** (the victims)[40] φόνῳ τὸ κακούργημα ἂν ἐκηρύσσετο καὶ εἰς **τούτους** (the murderers) ἂν ἡ ὑποψία ἧκεν.
>
> 2.3.2
>
> Or if others had been seen committing a crime and had killed the victims so that they would not be identified, then the other crime would have been reported at the same time as this murder, and suspicion would have fallen on those others.
>
> transl. GAGARIN

In the absence of extra-textual information a first-sight solitary reader would find this sequence ambiguous; this would not have been the case with an oral reader who already knew the text—someone like Antiphon "the sophist" himself—and could perhaps use "abstract deixis" to guide the listeners of an *anagnōsis* to the correct interpretation.[41]

5 Repetition and the Audience's Memory

Being clearly understood was not the only concern of a litigant stating his case before an Athenian court. It was also in his interest to make sure that the

40 Cf. Gagarin (1997) 136.

41 In abstract deixis speakers point at empty spaces that come to represent physically absent referents, see McNeill et al. (1993). Head movements often have this purpose, cf. Wagner et al. (2014) 214.

judges were struck by his arguments and remembered them. This was only to be achieved by means of the oral delivery of his speeches, of which no written copies would normally be accessible during trials. An entirely textual strategy which ancient rhetoricians recommended for this purpose was to repeat keywords and points of argumentation and to recapitulate them frequently. Remarks on the mnemonic effectiveness on the audience of such stylistic devices are spread throughout ancient Greek rhetoric, from its very beginnings down to late antique treatises,[42] and their implementation is clearly visible in the extant speeches.

In Antiphon's longest logographic speech, *On the Murder of Herodes*, for example, we can detect a rather rich pattern of repetition, as the list below shows. Several of the repeated arguments appeal to the judges' emotions,[43] especially in the epilogue of the speech (e.g. 12, 15, 17):

1. The defendant endured physical violence on the prosecutors' part: 5.2, 5.8 (*bis*), 5.17, 5.18, 5.48, 5.96
2. The prosecutors made up their own laws: 5.12, 5.13
3. The prosecutors' witnesses are unsworn: 5.12 (*bis*), 5.90, 5.96
4. The defendant could have avoided coming to Athens: 5.13, 5.93
5. The laws on homicide are the finest: 5.14, 5.15
6. The defendant had a good reason to travel: 5.20, 5.21, 5.22
7. The defendant has an alibi: 5.23, 5.26, 5.27, 5.42
8. The jury should only consider the facts: 5.25, 5.84
9. The prosecutors interrogated witnesses long after the event: 5.29, 5.31
10. The informer is dead: 5.32, 5.35, 5.36, 5.37, 5.46
11. The prosecutors' interrogation procedure was illegal: 5.31, 5.52
12. The informer decided to speak the truth when facing death: 5.33, 5.37, 5.41
13. The prosecutors killed the informer: 5.34 (*bis*), 5.36, 5.47 (*bis*)
14. The defendant had no reason to kill the victim: 5.57 (*bis*), 5.66
15. The verdict must not be rushed, its consequences might be irrevocable: 5.71, 5.72, 5.73, 5.85, 5.91–92, 5.94
16. The judges should not let injustice prevail: 5.73, 5.80, 5.87, 5.84
17. The defendant's father is too old to assist him and defend himself: 5.74, 5.79

42 See Vatri (2015).

43 Cf. Gagarin (2002) 137. Verbatim repetition has been identified as an involvement device in conversation, and is also effectively exploited for the same purpose in contemporary oratory. See Tannen (2007) 48–101, 167–169.

18. The defendant has not sinned, for the gods did not punish him: 5.81–83, 5.93
19. (Sections 31–42 are recapitulated at 49–50)

Repetition, however, is not at all absent from the *Tetralogies*. In the defence speeches of the *Second Tetralogy*, for instance, classes of terms which express the main points in the argument (that is, that the killing was accidental and that the victim is responsible) are often repeated:

> ὑποτρέχω/διατρέχω, ὑποδρομή/διαδρομή, ὑπέρχομαι: 3.2.4 (*bis*), 3.2.5 (*ter*), 3.2.8, 3.4.4 (*bis*), 3.4.5 (*bis*), 3.4.6, 3.4.7, 3.4.10
> ἁμαρτία, ἁμάρτημα, (ἐξ)αμαρτάνω: 3.2.3, 3.2.5, 3.2.6 (*bis*), 3.2.7, 3.2.8 (*quinquies*), 3.2.9, 3.2.10, 3.4.5 (*quater*), 3.4.6, 3.4.7, 3.4.8 (*bis*), 3.4.9

Repetition of arguments is virtually only found in the defence speeches:

1. The murderer was simply practicing his javelin: 3.2.3, 3.2.7,
2. The javelin was thrown within the prescribed boundaries: 3.2.4, 3.2.7, 3.4.5
3. It was the victim who ran under the javelin: 3.2.4, 3.2.5, 3.4.4, 3.4.5, 3.4.6, 3.4.7, 3.4.10
4. The victim prevented the murderer from hitting his target: 3.2.4, 3.2.7
5. It was the victim's mistake: 3.2.5, 3.2.8, 3.2.9, 3.2.10, 3.4.7, 3.4.9

If we consider the size and terse structure of the speeches in the *Second Tetralogy*, the proportion of repetition is comparable to that of *On the Murder of Herodes*;[44] probably, Antiphon regarded repetition as a technique of persuasion[45] which he reproduced and explored in the *Tetralogies* as well.

6 Conclusion

Oratorical delivery is a highly somatic form of communication. The linguistic message is complemented by prosody and gesture, which guide the audience in the correct interpretation of the message itself. This was a major concern for forensic orators, who delivered speeches on crucial matters in highly stressful situations, in which the very establishment of functioning communication

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44 *Pace* Gagarin (1997) 33.
45 Cf. Gagarin (2002) 155, 159, 165–166, and Due (1980) 27 n. 10, 73.

could be difficult. Persuasion started from the correct comprehension of the message on the part of the judges, and clarity of expression was a fundamental requirement for an effective speech. Analysis of a sample of Antiphon's logographic writing has confirmed this: syntactic/semantic ambiguities are positively avoided.

At the same time, the somatic nature of *hypocrisis* allows the exploitation of the disambiguating power of paralinguistic and extra-linguistic elements, and licenses linguistic phenomena that would intrinsically entail ambiguity on the written page. Such phenomena include the successive use of the same demonstrative to refer to different entities, which could be disambiguated by gesture in *hypocrisis*, but would be a source of difficulty for readers. The survey presented in this study has shown that such sequences do indeed appear in Antiphon's logographic speeches and could perhaps be taken as a cue to physical deixis. However, they are not absent from the *Tetralogies* either—if we envisage a solitary reader, he or she would need to ponder on the text and deduce the right referents.

Another major concern for forensic orators was the necessity that the judges internalised their arguments. When a written text is available for *anagnōsis* and perusal, such concern did not need to be addressed directly through the deployment of specific rhetorical techniques—even though it could.[46] In forensic *hypocrisis*, however, written copies of the speech were absent from the scene, and orators were encouraged to exploit a rhetorical device like repetition, whose stylistic dullness in *anagnōsis* was largely compensated by the vocal and gestural components of *hypocrisis*. Once again, the logographic style of Antiphon fits in the theoretical picture: repetition is a device that he knows and uses extensively. The sample from the *Tetralogies* examined in this study shows a comparable proportion of repetition patterns. As anticipated, the linguistic reflexes of the communicative necessities of forensic *hypocrisis* need not be absent from speeches that were not meant for *hypocrisis* at all—such speeches may be as clear and 'memory-friendly' as those for which clarity and memorability were crucial priorities. What is important, this survey suggests that the language of Antiphon's public speeches is well matched to the constraints, and effectively exploits the resources, of oratorical *hypocrisis*. Performance may, and does, shape language and its perception.

46 See Vatri (2015).

Bibliography

MRR = Broughton, T.R.S. 1951–1952, 1986: *The Magistrates of the Roman Republic*, vols. I–III. New York.

Aldrete, G.S. 1999. *Gestures and Acclamations in Ancient Rome*. Baltimore and London.

Alexander, M.C. 1990. *Trials in the Late Roman Republic, 149 B.C. to 50 B.C.* Toronto.

Allan, D.J. 1980. "Ἀναγιγνώσκω and Some Cognate Words." *CQ* 30: 244–251.

Allen, D. 2000a. *The World of Prometheus: The Politics of Punishing in Democratic Athens*. Princeton.

Allen, D. 2000b. "Changing the Authoritative Voice: Lycurgus' *Against Leocrates*." *CA* 19: 5–33.

Alschuler, A.W. and A.G. Deiss. 1994. "A Brief History of the Criminal Jury in the United States." *University of Chicago Law Review* 61: 867–928.

Anand, Sanjeev. 2005. "The Origins, Early History and Evolution of the English Criminal Trial Jury." *Alberta Law Review* 43: 407–432.

Apostolakis, K. 2003. [*Λυσίου*] *Ὑπὲρ Πολυστράτου*. Athens.

Apostolakis, K. 2007. "Tragic Patterns in Forensic Speeches." *C&M* 58: 179–192.

Arnaoutoglou, I. 1998. *Ancient Greek Laws*. London.

Arnaoutoglou, I. 1993. "Pollution in the Athenian Homicide Law." *RIDA* 40: 110–135.

Athanassaki, L., Nikolaidis, A. and D. Spatharas. eds. 2014. *Ιδιωτικός βίος και δημόσιος λόγος στην ελληνική αρχαιότητα και στον Διαφωτισμό*. Herakleio.

Axer, J. 1980. *The style and the composition of Cicero's speech Pro Roscio Comoedo: origin and function*. Warsaw.

Azoulay, V. and P. Ismard. eds. 2011. *Clisthène et Lycurgue d'Athènes*. Paris.

Azoulay, V. 2009. "Lycurgue d'Athènes et le passé de la cite: entre neutralisation et instrumentalisation." *CEA* 46: 149–180.

Azoulay, V. 2011. "Les métamorphoses du *koinon* athénien: autour du *Contre Léocrate* de Lycurgue." In *Clisthène et Lycurgue d'Athènes*, eds. V. Azoulay and P. Ismard: 191–217. Paris.

Bablitz, L. 2007. *Actors and Audience in the Roman courtroom*. London.

Bain, D. 1977. *Actors and audience: a study of asides and related conventions in Greek Drama*. Oxford.

Bakker, M.P. de. 2012. "Demosthenes." In *Space in Ancient Greek Literature: studies in ancient Greek narrative*, ed. I.J.F. de Jong: 393–412. Leiden/ Boston.

Bakola, E. 2010. *Cratinus and the Art of Comedy*. Oxford.

Balsdon, J.P.V.D. 1938. "The History of the Extortion Court at Rome, 123–70 B.C." *Papers of the British School at Rome* 14: 98–114.

Balsdon, J.P.V.D. 1966. "Fabula Clodiana." *Historia* 15: 65–73.

Balla, Ch. ed. 2008. *Φιλοσοφία και ρητορική στην κλασική Αθήνα*. Herakleio.

Bardon, H. 1952. *La littérature latine inconnue I–II*. Paris.

Barker, E. 2009. *Entering the* Agon: *Dissent and authority in Homer, historiography and tragedy*. Oxford.

Barker, E. 2010. "Pragmatics: speech and text." In *A Companion to the Ancient Greek Language*, ed. E. Bakker: 151–167. Sussex.

Basore, J.W. 1908. "The Scholia on Hypokrisis in the Commentary of Donatus." PhD thesis, Baltimore.

Bastien, J.-L. 2007. *Le triomphe romain et son utilisation politique à Rome aux trois derniers siècles de la République* (Collection de l'École française de Rome 392). Rome.

Bauman, R. 1975. "Verbal art as performance." *American Anthropologist* 77: 290–311.

Bauman, R. 1986. *Story, Performance, and Event: Contextual Studies of Oral Narrative*. Cambridge.

Bell, A. 2004. *Spectacular Power in the Greek and Roman City*. Oxford.

Benitez, E. 1992. "Argument, Rhetoric, and Philosophic Method: Plato's *Protagoras*." *Philosophy & Rhetoric* 25: 222–252.

Bensi, C. 2009. "Su alcuni aspetti dell'*in Vatinium* di Cicerone." In *Repressione criminale nella Roma repubblicana fra norma e persuasione*, ed. B. Bantalucia: 427–458. Pavia.

Berry, D.H., transl. 2000. *Cicero: Defence Speeches*. Oxford.

Berry, D.H., transl. 2008. "Letters from an Advocate: Pliny's 'Vesuvius' Narratives (*Epistles* 6.16, 6.20)." *PLLS* 13: 297–313.

Bers, V. 1985. "Dikastic thorubos." In *Crux: Essays in Greek History Presented to G.E.M. de Ste. Croix*, eds. P.A. Cartledge and F.D. Harvey: 1–15. London.

Bers, V. 1994. "Tragedy and rhetoric." In *Persuasion: Greek Rhetoric in Action*, ed. I. Worthington: 176–195. London/New York.

Bers, V. 2009 *Genos Dikanikon: Amateur and Professional Speech in the Courtrooms of Classical Athens*. Cambridge/London.

Blass, F. 1893. *Die Attische Beredsamkeit*, vol. 3. Leipzig.

Blom, H. van der. 2010. *Cicero's Role Models: The Political Strategy of a Newcomer*. Oxford.

Blundel et al. 2013. "Introduction." *Helios* 40: 3–37.

Boegehold, A.L. 2009. *When a gesture was expected: a selection of examples from Archaic and Classical Greek Literature*. Princeton.

Bonifazi, A. 2014. "Deixis." In *Encyclopedia of Ancient Greek Language and Linguistics*, ed. G.K. Giannakis: 422–429. Leiden/Boston.

Bonner, S.F. 1977. *Education in ancient Rome: from the Elder Cato to the Younger Pliny*. London.

Bons, J.A.E. 1993. "Ἀμφιβολία: Isocrates and Written Composition." *Mnemosyne* 46: 160–171.

Booth, A.D. 1978. "Elementary and secondary education in the Roman Empire." *Florilegium* 1: 1–14.

Bouchet, C. 2008. "Les lois dans le *Contre Timarque* d'Eschine." *RCCM* 50: 267–288.

Bovie, P. 1967. Cicero: *Nine Orations and the Dream of Scipio. Newly Translated, with an Introduction*. New York.

Braun, T.F.R.G. 2000. "The choice of dead politicians in Eupolis's *Demoi*: Themistocles' exile, hero-cult and delayed rehabilitation; Pericles and the origins of the Peloponnesian War." In *The Rivals of Aristophanes*, eds. F.D. Harvey and J.M. Wilkins: 191–231. Swansea.

Braund, S.M. and C. Gill. eds. 1997. *The Passions in Roman Thought and Literature*. Cambridge.

Brauw, de M. 2002. "'Listen to the Laws Themselves:' Citations of Laws and Portrayal of Character in Attic Oratory." *CJ* 97: 161–176.

Brennan, T.C. 2000a. *The Praetorship in the Roman Republic: Volume 1*. Oxford and New York.

Brennan, T.C. 2000b. *The Praetorship in the Roman Republic: Volume 2*. Oxford and New York.

Brock, R. 2000. "Sickness in the body politic: medical imagery in the Greek polis." In *Death and disease in the ancient city*, eds. V.M. Hope and E. Marshall: 24–34. London/New York.

Brooks, P. amd P. Gewirtz. eds. 1996. *Law's Stories: Narrative and Rhetoric in the Law*. New Haven.

Broughton, T.R.S. 1951–1952, 1986. *The Magistrates of the Roman Republic*, vols. I–III. New York and Atlanta = *MRR*.

Brunt, P.A. 1988. *The Fall of the Roman Republic and Related Essays*. Oxford.

Budelmann, F. 2000. *The Language of Sophocles*. Cambridge

Bühler, K. 1990. *Theory of language: the representational function of language*. Amsterdam/Philadelphia.

Buis, E. 2004. "How to Play Justice and Drama in Antiquity: Law and Theater in Athens as Performative Rituals." *Florida Journal of International Law* 16: 697–725.

Burnet, J. 1924. *Plato's Euthyphro, Apology of Socrates and Crito*. Oxford.

Burns, E. 1972. *Theatricality: A Study of Convention in the Theatre and in Social Life*. London.

Butler, H.E. *The Institutio Oratoria of Quintilian*. 1920–1922. Cambridge, MA.

Butler, S. 2002. *The Hand of Cicero*. London.

Cairns, D. 1996. "*Hybris*, Dishonour, and Thinking Big." *JHS* 116: 1–32.

Cairns, D. 2003. "The Politics of Envy: Envy and Equality in Ancient Greece." In *Envy, Spite and Jealousy: The Rivalrous Emotions in Ancient Greece*, eds. D. Konstan and N.K. Rutter: 235–252. Edinburgh.

Cairns, D. 2011. "Looks of Love and Loathing: Cultural Models of Vision and Emotion in Ancient Greek Culture." *Metis* 9: 37–50.

Cairns, D.L. and R.A. Knox. eds. 2004. *Law, Rhetoric and Comedy in Classical Athens: Essays in Honour of Douglas M. MacDowell*. Swansea.

Calame, C. 2011. "Myth and Performance on the Athenian Stage: Praxithea, Erechtheus, Their Daughters, and the Etiology of Autochthony." *CPh*. 106: 1–19.

Canevaro, M. 2013. *The Documents in the Attic Oratory*. Oxford.

Carey, C. 1989. *Lysias: Selected Speeches*. Cambridge.

Carey, C. 1994. "Rhetorical Means of Persuasion." In *Persuasion: Greek Rhetoric in Action*, ed. I. Worthington: 26–45. London/New York.

Carey, C. 1994b. "Comic ridicule and democracy." In *Ritual, Finance, Politics*, ed. R.G. Osborne and S. Hornblower: 71–83. Oxford.

Carey, C. 1996. "Nomos in Attic Rhetoric and Oratory." *JHS* 116: 33–46.

Carey, C. transl. 2000. *Aeschines*. Austin.

Carey, C. transl. 2000. "Observers of speech and hearers of action." In *Literature in the Greek and Roman worlds*, ed. O. Taplin: 192–216. Oxford.

Carey, C. transl. 2004. "Offence and procedure." In *The law and the courts in classical Athens*, ed. E.M. Harris and L. Rubinstein: 111–136. London.

Carey, C. 2007. "Epideictic Oratory." In *A Companion to Greek Rhetoric*, ed. I. Worthington: 236–252. London.

Carey, C. 2013. "Marathon and the Construction of the Comic Past." In *Marathon 2,500 Years*, eds. C. Carey and M.J. Edwards: 123–142. London.

Carey, C. 2015. "Solon in the orators." In *Solon in the making: the early reception in the fifth and fourth centuries*, ed. G. Nagy and M. Noussia-Fantuzzi: 110–128. Berlin.

Cartledge, P. 1996. "Comparatively Equal." In J. Ober—C. Hedrick (eds.): 175–185.

Cartledge, P. and F.D. Harvey. eds. 1985. *Crux: Essays in Greek History Presented to G.E.M. de Ste. Croix on his 75th Birthday*. London.

Casamento, A. 2004. "'Parlare e lagrimar vedrai insieme.' Le lacrime dell'oratore." In *Le Passioni della Retorica*, ed. G. Petrone: 41–62. Palermo.

Chaniotis, A. 2012a. *Unveiling Emotions*. Vol. 1. Stuttgart.

Chaniotis, A. 2012b. *Unveiling Emotions*. Vol. 2. Stuttgart.

Chaniotis, A. 2013. "Paradoxon, Enargeia, Empathy: Hellenistic Decrees and Hellenistic Oratory." In *Hellenistic Oratory: continuity and change*, eds. C. Kremmydas and K. Tempest: 201–218. Oxford.

Chantraine, H. 1959. *Untersuchungen zur römischen Geschichte am Ende des 2. Jahrhunderts v. Chr*. PhD Diss., Mainz.

Chiron, P. 2002. *Rhétorique à Alexandre*. Paris.

Clarke, K.J. 2008. *Making Time for the Past: Local History and the Polis*. Oxford.

Classen, C.J. 1991. "The speeches in the courts of law: a three-cornered dialogue." *Rhetorica* 9: 195–207.

Cloud, D. 1994. "The Constitution and Public Criminal Law." In *The Cambridge Ancient History (Second Edition) Volume IX: The Last Age of the Roman Republic, 146–143 B.C.*, ed. J.A. Crook, A. Lintott, and E. Rawson: 491–530. Cambridge.

Cole, T. 1991. *The Origins of Rhetoric in Ancient Greece*. Baltimore/London.

Colin, G. 1933. "La déformation d'un document historique dans une argumentation d'orateur." *RPh* 7: 237–260.

Collard, C. and Cropp, M.J. and Lee, K.H. 1995. *Euripides: Selected Fragmentary Plays*, vol. 1. Warminster.

Connolly, J. 2010. "Virile Tongues: Rhetoric and Masculinity." In *A Companion to Roman Rhetoric*, eds. W.J. Dominik and J. Hall: 83–97. Chichester/ Malden, MA.

Connor, W.R. 1971. *The New Politicians of Fifth-Century Athens*. Princeton.

Connor, W.R. 1984. *Thucydides*. Princeton.

Connor, W.R. 1987. "Tribes, Festivals and Possessions: Civic Ceremonial and Political Manipulation in Archaic Greece." *JHS* 107: 40–50.

Cooper, F. and S. Morris. 1990. "Dining in Round Tables." In *Sympotica, A Symposium on the Symposion*, ed. O. Murray, 66–85. Oxford.

Cooper, C. 1992. *The Development of the Biographical Tradition on the Athenian Orators in the Hellenistic Period*. PhD Diss., British Columbia.

Cooper, C. 1995. "Hyperides and the trial of Phryne." *Phoenix* 49: 303–318.

Cooper, C. 2000. "Philosophers, Politics, Academics: Demosthenes' Rhetorical Reputation in Antiquity." In *Demosthenes: Statesman and Orator*, ed. I. Worthington: 224–245. London.

Cooper, C. 2004. "Demosthenes: Actor on the Political and Forensic Stage." In *Oral Performance and its Context*, ed. C.J. Mackie: 2004, 145–161. Leiden.

Corbeill, A. 1996. *Controlling Laughter: political humour in the Late Roman Republic*. Princeton.

Cornish, W.R. 1968. *The Jury*. London.

Couch, H.N. 1944. "Fooling the audience." *CJ* 40: 172–174.

Courtney, E. 1961. "The Prosecution of Scaurus in 54 B.C." *Philologus* 105: 151–156.

Cousin, J. 1973. "Quintilien e le theatre." In *Actes du IXe Congrés. Rome 13–18 avril 1973*: 459–467. Paris.

Crane, G. 1998. *Thucydides and the Ancient Simplicity: The Limits of Political Realism*. Berkeley/Los Angeles.

Crawford, J. 1994. *M. Tullius Cicero: the fragmentary speeches: an edition with commentary*. Atlanta.

Cropp, M.J. 1995. "Erechtheus." In *Euripides: Selected Fragmentary Plays*, eds. C. Collard, M.J. Cropp and K.H. Lee, vol. 1: 148–194. Warminster.

Csapo, E.G. 2010. *Actors and Icons of the Ancient Theater*. Chichester/ Malden MA.

Csapo, E.G. 2014. "The Iconography of Comedy." In *The Cambridge Companion to Greek Comedy*, ed. M. Revermann: 95–127. Cambridge.

Cudjoe, R. 2010. *The social and legal position of widows and orphans in classical Athens*. Symboles 3. Athens.

Cuguzi, P. 2003. "Qualche riflessione sulle idee retoriche di Plinio il Giovano." In *Plinius der Jüngere und seine Zeit*, eds. L. Castagna and E. Lefèvre: 95–122. Leipzig.

Cunningham, Valentine. 2007. "Why ekphrasis?" *CP* 102: 57–71.

Damon, C. 1997. *The Mask of the Parasite: A Pathology of Roman Patronage*. Ann Arbor.

David, J.-M. 1992. *Le patronat judiciaire au dernier siècle de la république romaine*. Rome.

Davies, J.K. 1971. *Athenian Propertied Families*. Oxford.

Davis, T.C. and T. Postlewait. eds. 2003. *Theatricality*. Cambridge.

De Temmerman, K. 2010. "Ancient Rhetoric as a Hermeneutical Tool for the Analysis of Characterisation in Narrative Literature." *Rhetorica* 28: 23–51.

Degrassi, A. 1947. *Inscriptiones Italiae* XIII. Rome.

Demetriou Ch. 2011. *Donatus' Commentary on Terence: A Study of the Scholia on Performance*. PhD Diss., Leeds.

Demetriou Ch. 2014. "Donatus' commentary: The reception of Terence's performance." In *The Oxford Handbook of Greek and Roman Comedy*, eds. A. Scafuro and M. Fontaine: 782–799. Oxford.

Denommé, J.-M. 1974. *Recherches sur la Langue et le Style d'Isée*. Hildesheim.

Dickey, E. 1996. *Greek forms of address: from Herodotus to Lucian*. Oxford.

Dickey, E. 2012. *The colloquia of the Hermeneumata pseudodositheana. vol. 1*. Cambridge.

Dickie, M.W. 1991. "Heliodorus and Plutarch on the Evil Eye." *CP* 86: 17–29.

Doblhofer, G. 1990. *Die Popularen der Jahre 111–199 vor Christus: eine Studie zur Geschichte der späten römischen Republik*. Böhlau.

Dodds, E.R. 1957. *The Greeks and the irrational*. Boston.

Dodwell, C.R. 2000. *Anglo-Saxon Gestures and the Roman Stage*. Cambridge.

Dominik, W.J. 1997. "The Style is the Man: Seneca, Tacitus and Quintilian's Canon." In *Roman Eloquence: Rhetoric in Society and Literature*, ed. W.J. Dominik: 50–68. London.

Dominik, W.J. 2007. "Tacitus and Pliny on Oratory." In *A Companion to Roman Rhetoric*, eds. W.J. Dominik and J. Hall: 323–338. Chichester/Malden, MA.

Dorjahn, A.P. 1927. "Poetry in Athenian Courts." *CP* 22: 85–93.

Dover, K.J. 1950. "The Chronology of Antiphon's Speeches." *CQ* 44: 44–60.

Dover, K.J. 1974. *Greek popular morality in the time of Plato and Aristotle*. Oxford.

Dover, K.J. 1997. *The Evolution of Greek Prose Style*. Oxford/New York.

Dougherty, C. and L. Kurke. eds. 1998. *Cultural Poetics in Archaic Greece: Cult, Performance, Politics*. Oxford.

Due, B. 1980. *Antiphon. A Study in Argumentation*. Copenhagen.

Dufallo, B. 2007. *The Ghosts of the Past: Latin Literature, the Dead, and Rome's Transition to a Principate*. Columbus, OH.

Dufour, M. and A. Wartelle. 1973. *Aristote: Rhétorique. Tome III, Livre 3*. Paris.

Duncan, A. 2006. *Performance and Identity in the Classical World*. Cambridge.

Dupont, F. 2000. *L'orateur sans visage: Essai sur l'acteur romain et son masque*. Paris.

Dutsch, D.M. 2007. "Gestures in the manuscripts of Terence and late revivals of literary drama." *Gesture* 7.1: 39–71.

Dutsch, D.M. 2013. "Towards a Roman Theory of Theatrical Gestures." In *Perfomance in Greek and Roman Theatre*, eds. G.W.M. Harrison and V. Liapis: 409–432. Leiden/Boston.

Dyck, A.R. 2001. "Dressing to Kill: Attire as Proof and Means of Characterization in Cicero's Speeches." *Arethusa* 34.1: 119–130.

Easterling, P. 1990. "Constructing Character in Greek Tragedy." In *Characterization and Individuality in Greek Literature*, ed. C.P.R. Pelling: 83–99. Oxford.

Easterling, P. 1999. "Actors and voices: reading between the lines in Aeschines and Demosthenes." In *Performance culture and Athenian democracy*, eds. S. Goldhill and R. Osborne: 154–166. Cambridge.

Easterling, P.E. and E. Hall. eds. 2002. *Greek and Roman Actors: Aspects of an Ancient Profession*. Cambridge.

Eden, K. 1986. *Poetic and Legal Fiction in the Aristotelian Tradition*. Princeton.

Edwards, C. 1993. *The Politics of Immorality in Ancient Rome*. Cambridge.

Edwards, M. 2007. transl. *Isaeus*. Austin.

Edwards, M. 2008. "Isaeus and the Athenian Inheritance Laws." *Symposion* 2007: 41–54.

Efstathiou, A. 2013. "The Historical Example of Marathon as used in the speeches *On the False Embassy*, *On the Crown*, and *Against Ctesiphon* by Demosthenes and Aeschines." In *Marathon—2,500 Years*, eds. C. Carey and M.J. Edwards: 181–198. London.

Elster, J. 1999. *Alchemies of the Mind: Rationality and the Emotions*. Cambridge.

Enders, J. 1997. "Delivering Delivery: Theatricality and the Emasculation of Eloquence." *Rhetorica* 15: 253–278.

Famerie, E. 1992. "La condamnation d'Arthmios de Zéleia." In *Serta Leodiensia Secunda: mélanges publiés par les classiques de Liège à l'occasion du 175e anniversaire de l'Université*: 191–199. Liège.

Fantham, E. 1982. "Quintilian on Performance: Traditional and Personal Elements in 'Institutio' 11.3." *Phoenix* 36.3: 243–263.

Fantham, E. 1984. "Roman Experience of Menander in the Late Republic and Early Empire." *TAPhA* 114: 299–304.

Fantham, E. 1988. "Varietas and Satietas; *De oratore* 3.96–103 and the limits of *ornatus*." *Rhetorica* 6.3: 275–290.

Fantham, E. 1997. "The Contexts and Occasions of Roman Rhetoric." In *Roman Eloquence: Rhetoric in Society and Literature*, ed. W.J. Dominik: 111–128. London.

Fantham, E. 2000. "The early training of the Roman orator: principles and practice." *Paideia* 55: 197–215.

Fantham, E. 2002. "Orator and/et actor." In *Greek and Roman Actors: Aspects of an Ancient Profession*, eds. P. Easterling and E. Hall: 362–376. Cambridge.

Fantuzzi, M. and R. Hunter. 2002. *Tradition and Innovation in Hellenistic Poetry*. Cambridge.

Faraguna, M. ed. 2013. *Legal Documents in Ancient Societies* IV. Trieste.

Farenga V. 2006. *Citizen and self in ancient Greece*. Cambridge.

Fehrle, R. 1983. *Cato Uticensis*. Darmstadt.

Felson, N. 2004. "Introduction: the poetics of deixis in Alcman, Pindar, and other lyric." *Arethusa* 37: 253–266.

Feral, J. 2002. "Foreword." *Substance* 31: 3–16.

Ferri, R. 2012–2013. "Witness and Lawyer in the Roman courts: Linguistic strategies of evasiveness and intimidation in Roman trial debates." *Incontri di filologia classica* 12: 57–99.

Fischer-Lichte, E. 1992. *The Semiotics of Theatre*. Transl. Jeremy Gaines and Doris L. Jones. Bloomington/Indianapolis.

Fischer-Lichte, E. 2004. "Thinking about the origins of theatre in the 1970s." In *Dionysus since 69: Greek tragedy at the dawn of the third millennium*, eds. E. Hall, F. Macintosh, and A. Wrigley: 329–360. Oxford.

Fischer-Lichte, E. 2010. "Performance as event—reception as transformation." In *Theorising performance: Greek drama, cultural history, and critical practice*, eds. E. Hall and S. Harrop: 29–42. London.

Fisher, N. 1976. *Social values in classical Athens*. London.

Fisher, N. 1992. *Hybris: A Study in the Values of Honour and Shame in Ancient Greece*. Warminster

Fisher, N. 2001. *Aeschines against Timarchus*. Oxford.

Fisher, N. 2000. "Symposiasts, Fisheaters and Flatterers: Social Mobility and Moral Concern." In D. Harvey–J. Wilkins (eds.): 355–396.

Fisher, N. 2003. "'Let Envy Be Absent': Envy, Liturgies, and Reciprocity in Athens." In D. Konstan–N.K. Rutter (eds.): 181–216.

Fisher, N. and H. van Wees. eds. 2015. *Aristocracy in Antiquity: Redefining Greek and Roman Elites*. Swansea.

Fitzgerald, W. 2007. "The Letter's the Thing (Pliny, Book 7)." In *Ancient Letters: Classical and Late Antique Epistolography*, eds. R. Morello and A.D. Morrison: 191–210. Oxford.

Flaig, E. 2004. *Ritualisierte Politik: Zeichen, Gesten und Herrschaft im Alten Rom*. Göttingen.

Flower, H.I. 2010. *Roman Republics*. Princeton.

Fögen, T. 2009. "*Sermo corporis*: Ancient reflections on *gestus*, *vultus* and *vox*." In *Bodies and Boundaries in Graeco-Roman Antiquity*, eds. T. Foegen and M.M. Lee: 15–44, Berlin/New York.

Fögen, T. and M.M. Lee. eds. 2009. *Bodies and Boundaries in Graeco-Roman Antiquity*. Berlin/New York.

Foley, Brian J. and R.A. Robbins. 2001. "Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections." *Rutgers Law Journal* 32: 459–484.

Forbes, C.A. 1967. "An Episode in the Life of Aeschines." *AJP* 88: 443–448.

Ford, A.L. 1999. "Reading Homer from the Rostrum: Poems and Laws in Aeschines' *Against Timarchus*." In *Performance Culture and Athenian Democracy*, eds. S.D. Goldhill and R.G. Osborne: 231–256. Cambridge.

Forster, E.S. ed. 1927. *Isaeus*. Cambridge, MA.

Fortenbaugh, W.W. 1996. "Aristotle's Accounts of Persuasion through Character." In *Theory, Text, Context: Issues in Greek Rhetoric and Oratory*, ed. C.L. Johnstone: 147–168. Albany, NY.

Foster, G.M. 1972. "The Anatomy of Envy: A Study in Symbolic Behaviour." *Current Anthropology* 13: 165–202.

Frazel, T.D. 2009. *The Rhetoric of Cicero's In Verrem*. Göttingen.

Friedman, L.M. 2009. *Dead Hands: a Social History of Wills, Trusts, and Inheritance Law*. Stanford.

Frier, B.W. 1985. *The Rise of the Roman Jurists: Studies in Cicero's Pro Caecina*. Princeton, NJ.

Gaffney, G.E. 1995. "*Severitati respondere*: Character Drawing in *Pro Caelio* and Catullus' *Carmina*." *CJ* 90: 423–431.

Gagarin, M. 1997. *Antiphon. The Speeches*. Cambridge.

Gagarin, M. 1999. "The Orality of Greek oratory." In *Signs of orality: the oral tradition and its influence in the Greek and Roman world*, ed. E.A. Mackay, 163–180. Leiden/Boston.

Gagarin, M. 2002. *Antiphon the Athenian. Oratory, Law, and Justice in the Age of the Sophists*. Austin.

Gamberini, F. 1983. *Stylistic Theory and Practice in the Younger Pliny*. Hildesheim.

Gavrilov, A.K. 1997. "Techniques of reading in classical antiquity." *CQ* 47: 56–73.

Gazich, R. 2003. "Retorica dell'esemplarità nelle *Lettere* di Plinio." In *Plinius der Jüngere und seine Zeit*, eds. L. Castagna and E. Lefèvre: 123–141. Leipzig.

Geffcken, K. 1973. *Comedy in the Pro Caelio with an Appendix on the Clodium et Curionem*. Leiden.

Giannadaki, I. Forthcoming. "Throwing sand in the eyes of the dikasts." In *Use and Abuse of Law in the Athenian Courts*, eds. C. Carey, I. Giannadaki, and B. Griffith-Williams. Leiden.

Gibson, B. 2011. "Contemporary Contexts." In *Pliny's Praise: The* Panegyricus *in the Roman World*, ed. P. Roche: 104–124. Cambridge.

Gibson, R. and R. Morello. eds. 2013. *Reading the Letters of Pliny the Younger*. Cambridge.

Gill, C. 1984. "The Ethos-Pathos Distinction in Rhetorical Theory and Literary Criticism." *CQ* 34:149–166.

Girone, M. 1998. *Iamata: guarigioni miracolose di Asclepio in testi epigrafici*. Bari.

Gleason, M.W. 1995. *Making Men: Sophists and Self-Presentation in Ancient Rome*. Princeton.

Goldhill, S. 1990. "Character and Action, Representation and Reading: Greek Tragedy and its Critics." In *Characterization and Individuality in Greek Literature*, ed. C.P.R. Pelling: 100–127. Oxford.

Goldhill, S. 2012. *Sophocles and the Language of Tragedy*. Oxford.

Goldhill, S. and R. Obsorne. eds. 1999. *Performance Culture and Athenian Democracy*. Cambridge.

Gomme, A.W. 1962. "Thucydides and Cleon." In *More Essays in Greek History and Literature*, ed. A.W. Gomme: 112–121. Oxford.

Gondos, A.E. 1996. *Auf dem Weg zur rhetorischen Theorie. Rhetorischen Reflexion im ausgehenden fuenften Jahrhundert v. Chr*. Tübingen.

Gotteland, S. 2006. "La sirène et l'enchanteur: portraits croisés d'Eschine et de Démosthène à la tribune." *REG* 119: 588–608.

Gotteland, S. 2010. "Conseiller et persuader: quelques échos thucydidéens dans les *Harangues* de Démosthène." In *Ombres de Thucydide: La Réception de l'historien depuis l'Antiquité jusqu'au début du XX*e *siècle*, eds. V. Fromentin, S. Gotteland, and P. Payen: 35–50. Paris.

Gould, J. 1973. "*Hiketeia*." *JHS* 93: 74–103.

Graff, R. 2001. "Reading and the "Written Style" in Aristotle's *Rhetoric*." *Rhetoric Society Quarterly* 31: 19–44.

Greenidge, A.H.J. 1901. *The Legal Procedure of Cicero's Time*. New York. (1971 reprint used.)

Gribble, D. 1999. *Alcibiades and Athens: A Study in Literary Presentation*. Oxford.

Gribble, D. 2006. "Individuals in Thucydides." In *Brill's Companion to Thucydides*, eds. A. Rengakos and A. Tsakmakis: 439–468. Leiden.

Griffin, M. 2007. "The Younger Pliny's Debt to Moral Philosophy." *HSCPh* 103: 451–481.

Griffith-Williams, B. Forthcoming. "Use or Abuse of the *Diamarturia* in an Athenian Inheritance Case?" In *Use and Abuse of Law in the Athenian Courts*, eds. C. Carey, I. Giannadaki, and B. Griffith-Williams. Leiden.

Gruen, E.S. 1968. *Roman Politics and the Criminal Courts 149–178 B.C.* Cambridge, MA.

Gruen, E.S. 1974. *The Last Generation of the Roman Republic*. Berkeley.

Guérin, C. 2015. *La voix de la vérité: le témoignage et ses enjeux rhétoriques dans les tribunaux romains*. Paris.

Gunderson, E. 2000. *Staging Masculinity: The Rhetoric of Performance in the Roman World*. Ann Arbor.

Hall, E. 1991. *Inventing the Barbarian: Greek Self-Definition through Tragedy*. Oxford.

Hall, E. 1995. "Lawcourt Dramas: The Power of Performance in Greek Forensic Oratory." *BICS* 40: 39–58.

Hall, E. 2002. "The singing actors of antiquity." In *Greek and Roman actors. Aspects of an ancient profession*, eds. P. Easterling and E. Hall. 3–38. Cambridge.

Hall, E. 2006. *The Theatrical Cast of Athens: Interactions between Ancient Greek Drama and Society*. Oxford.

Hall, E. 2010a, *Greek Tragedy: Suffering under the Sun*. Oxford.

Hall, E. 2010b. "Towards a theory of performance reception." In *Theorising performance: Greek drama, cultural history, and critical practice*, eds. E. Hall and S. Harrop: 10–28. London.

Hall, E. 2013. "Rhetorical Actors and Other Versatile Hellenistic Vocalists." In *Hellenistic Oratory: continuity and change*, eds. C. Kremmydas and K. Tempest: 109–138. Oxford.

Hall, J.C.R. 2004. "Cicero and Quintilian on the Oratorical Use of Hand Gestures." *CQ* 54: 143–160.

Hall, J.C.R. 2010. "Oratorical Delivery and the Emotions: Theory and Practice." In *A Companion to Roman Rhetoric*, eds. W. Dominik and J. Hall: 218–234. Oxford.

Hall, J.C.R. 2014. *Cicero's Use of Judicial Theater*. Ann Arbor.

Hall, J.M. 1997. *Ethnic identity in Greek antiquity*. Cambridge.

Hammar, I. 2013. *Making Enemies: the Logic of Immorality in Ciceronian Oratory*. Lund.

Halliwell, S. 2011. *Between Ecstasy and Truth: Interpretations of Greek Poetics from Homer to Longinus*. Oxford.

Hanink, J.M. 2014. *Lycurgan Athens and the Making of Classical Tragedy*. Cambridge.

Hansen, M.H. 1975. *Eisangelia: the sovereignty of the people's court in Athens in the fourth century B.C. and the impeachment of generals and politicians*. Odense.

Hansen, M.H. 1976. *Eisangelia: The sovereignty of the people's court in Athens in the fourth century B.C. and the public action against the unconstitutional proposals*. Odense.

Hansen, M.H. 1989a. "The Athenian "Politicians", 403–322 B.C." In *The Athenian Ecclesia* 2, ed. M.H. Hansen: 1–24. Copenhagen.

Hansen, M.H. 1989b. "Rhetores and Strategoi in Fourth-Century Athens." In *The Athenian Ecclesia* 2, ed. M.H. Hansen: 27–72. Copenhagen.

Hansen, M.H. 1989c. "The Number of *Rhetores* in the Athenian *Ecclesia*, 355–322 B.C." In *The Athenian Ecclesia* 2, ed. M.H. Hansen: 93–127. Copenhagen.

Hansen, M.H. 1991. *The Athenian democracy in the age of Demosthenes*. 2nd ed., Bristol.

Hansen, M.H. 1995. *The Trial of Socrates: From the Athenian Point of View*. Copenhagen.

Harries, B. 2007. "Acting the part: techniques of the comic stage in Cicero's early speeches." In *Cicero on the Attack*, ed. J. Booth: 129–147. Swansea.

Harries, J. 2007. *Law and Crime in the Roman World*. Cambridge.

Harris, E.M. 1989. "The Date of Apollodorus' Speech against Timotheus and Its Implications for History and Legal Procedure." *AJP* 109: 44–52 (Reprinted in Harris, E.M. 2006. *Democracy and the rule of law in classical Athens: Essays on law, society and politics*. Cambridge).

Harris, E.M. 1989. "Demosthenes' Speech *Against Meidias*." *HSCP* 92: 117–136.

Harris, E.M. 1994. “Law and oratory.” In *Persuasion: Greek Rhetoric in Action*, ed. I. Worthington: 130–150. London/New York.

Harris, E.M. 1995. *Aeschines and Athenian Politics*. Oxford/New York.

Harris, E.M. 1999/2000. “The penalty for frivolous prosecution in Athenian law.” *Dike* 2: 123–142.

Harris, E.M. 2000. “Open Texture in Athenian Law.” *Dike* 3: 27–79.

Harris, E.M. 2001. *Dinarchus, Hyperides, & Lycurgus*. Austin.

Harris, E.M. 2006. *Democracy and the Rule of Law in Classical Athens: Essays on Law, Society and Politics*. Cambridge.

Harris, E. M. 2008. *Demosthenes* 20–22. Austin.

Harris, E.M. 2009/10. Review article of Lanni, *Law and Justice in the Courts of Classical Athens*. Cambridge.

Harris, E.M. 2013a. *The Rule of Law in Action in Democratic Athens*. Oxford.

Harris, E.M. 2013b. “The Plaint in Athenian Law and Legal Procedure.” In *Legal Documents in Ancient Societies* IV, ed. M. Faraguna: 156–175. Trieste.

Harris, E.M. 2013c. “How to address the Assembly.” *CQ* 63: 94–109.

Harris, E.M. 2015. “The Role of Pollution in Athenian Homicide Law.” In *Public and Private in Ancient Mediterranean Law and Religion*, eds. C. Ando and J. Rüpke: 11–35. Berlin.

Harris, E.M. and L. Rubinstein. eds. 2004. *The Law and the Courts in Ancient Greece*. London.

Harris, W.V. 2001. *Restraining Rage: The Ideology of Anger Control*. Cambridge MA.

Harrison, A.R.W. 1968. *The law of Athens*, vol. 1, *The Family and Property*. Oxford.

Harvey, D. and J. Wilkins. eds. 2000. *The Rivals of Aristophanes*. London

Hawkins, S. 2012. “On the Oscanism *salaputium* in Catullus 53.” *TAPhA* 142: 329–353.

Heath, M. 1990. “Justice in Thucydides’ Athenian Speeches.” *Historia* 39: 385–400.

Heiden, B. 1993, *“Emotion, acting and the Athenian ethos.”* In *Tragedy, comedy, and the polis: papers from the Greek drama conference Nottingham*, ed. A. Sommerstein et al.: 145–166. Bari.

Henderson, J. 2002. *Pliny’s Statue: The Letters, Self-Portraiture and Classical Art*. Liverpool.

Henderson, J. 2003. “Portrait of the Artistic as a Figure of Style: P.L.I.N.Y’s Letters.” *Arethusa* 36.2: 115–125.

Herman, G. 2006. *Morality and Behaviour in Democratic Athens: A Social History*. Cambridge.

Hernández Muñoz, F.G. 2006. “Demóstenes, Esquines y el teatro.” In *Koinos Logos. Homenaje al profesor José García López*, eds. E. Calderón Dorda, A. Morales, and M. Valverde: 425–430. Murcia.

Herrman, J. ed. 2009. *Hyperides: Funeral Oration*. Oxford/New York.

Herzog, R. 1931. *Die Wunderheilungen von Epidauros*. Leipzig.

Hesk, J. 1999. "The rhetoric of anti-rhetoric in Athenian oratory." In *Performance culture and Athenian democracy*, eds. S. Goldhill and R. Osborne: 201–230. Cambridge.

Hesk, J. 2000. *Deception and Democracy in Classical Athens*. Cambridge.

Hesk, J. 2012. "Common Knowledge and the Contestation of History in some Fourth-century Athenian Trials." In *Greek Notions of the Past in the Archaic and Classical Eras. History without Historians*, eds. J.M. Marincola, L.J. Llewellyn-Jones, and C.A. Maciver: 207–226. Edinburgh.

Hesk, J. 2013. "Leadership and Individuality in the Athenian Funeral Orations." *BICS* 56: 49–65.

Heusch, C. 2011. *Die Macht der memoria: Die 'Noctes Atticae' des Aulus Gellius im Licht der Erinnerungskultur des 2. Jahrhunderts n. Chr.* Berlin/New York.

Hobden, F.E. 2007. "Imagining past and present: a rhetorical strategy in Aeschines 3, *Against Ctesiphon*." *CQ* 57: 490–501.

Hoffer, S.E. 1999. The Anxieties of Pliny the Younger. Atlanta.

Holcomb, C. 2001. " 'The Crown of all our Study': Improvisation in Quintilian's *Institutio Oratoria*." *Rhetoric Society Quarterly* 31.3: 53–72.

Holford-Strevens, L. 1988. *Aulus Gellius*. London.

Hölkeskamp, K.-J. 1995. "*Oratoris maxima scaena*: Reden vor dem Volk in der politischen Kultur der Republik." In *Demokratie in Rom? Die Rolle des Volkes in der Politik der römischen Republik*, ed. M. Jehne, Historia Einzelschrift 96: 11–49. Stuttgart. = K.-J. Hölkeskamp 2004. *Senatus Populusque Romanus. Die politische Kultur der Republik—Dimensionen und Deutungen*: 219–256; with addenda. Stuttgart.

Hölkeskamp, K.-J. 2011. "Self-serving Sermons. Oratory and the self-construction of the republican aristocrat." In *Praise and Blame in Roman Republican Rhetoric*, eds. C. Smith and R. Covino: 17–34. Swansea.

Hölkeskamp, K.-J. 2013. "Friends, Romans, Countrymen: Addressing the Roman People and the Rhetoric of Inclusion." In *Community and Communication. Oratory and Politics in the Roman Republic*, eds. C. Steel and H. van der Blom: 11–28. Oxford.

Holtz, L. 1981. *Donat et la tradition de l'enseignement grammatical. Étude sur l'Ars Donati et sa diffusion (IV–IX siècle) et édition critique*. Paris.

Hornblower, S. 1987. *Thucydides*. London.

Hout, M.P.J. van den 1999. *A Commentary on the Letters of M. Cornelius Fronto*. Leiden.

Hubbard, T.K. 2008. "Getting the last word: publication of political oratory as an instrument of historical revisionism." In *Orality, Literacy, Memory in the ancient Greek and Roman world*, ed. E.A. Mackay: 185–202. Leiden/Boston.

Humbert, J. 1960. *Syntaxe Grecque*. 3rd ed. Paris.

Hunter, V.J. 1994. *Policing Athens: social control in the Attic lawsuits, 420–320 BC*. Princeton.

Hutchinson, G.O. 2011. "Politics and the Sublime in the *Panegyricus*." In *Pliny's Praise: The Panegyricus in the Roman World*, ed. P. Roche: 125–141. Cambridge.

Hymes, D.H. 1974. *Foundations in sociolinguistics: an ethnographic approach*. Philadelphia.

Innes, D. 2011, "The *Panegyricus* and Rhetorical Theory." In *Pliny's Praise: The Panegyricus in the Roman World*, ed. P. Roche: 67–84. Cambridge.

Inns of Court School of Law. 2006. *Advocacy*. Oxford.

Irigoin, J. 1976. "Le plus ancien acrostiche grec? *Anth. Pal.* VI.330 et *IG* IV^2 255." In *Recueil Plassart: Études sur l'antiquité grecque offertes à André Plassart par ses collègues de la Sorbonne*, ed. F. Chamoux: 119–123. Paris.

Iser, Wolfgang. 1994. "Readers and the concept of the implied reader." In *Contexts for Criticism*, ed. D. Keesey: 137–144. London.

Itgenshorst, T. 2005. *Tota illa pompa: der Triumph in der römischen Republik*. Göttingen.

Jebb, R.C. 1893. *The Attic Orators. From Antiphon to Isaeus*. London.

Jehne, M. 2010. "Die Dominanz des Vorgangs über den Ausgang: Struktur und Verlauf der Wahlen in der römischen Republik." In *Technik und Symbolik vormoderner Wahlverfahren*, eds. C. Dartmann, G. Wassilowsky, and T. Weller: 17–34. Munich.

Jehne, M. 2011. "Blaming the people in front of the people. Restraint and outbursts of orators in Roman *contiones*." In *Praise and Blame in Roman Republican Rhetoric*, eds. C. Smith and R. Covino: 111–125. Swansea.

Jehne, M. 2013. "Feeding the plebs with words. The significance of senatorial public oratory in the small world of Roman politics." In *Community and Communication. Oratory and Politics in the Roman Republic*, eds. C. Steel and H. van der Blom: 49–62. Oxford.

Johnson, J.F. and D.C. Clapp. 2005. "Athenian Tragedy: An Education in Pity." In *Pity and Power in Ancient Athens*, ed. R. Sternberg: 123–164. Oxford.

Johnstone, C.L. 1996. "Greek Oratorical Settings and the Problem of the Pnyx: Rethinking the Athenian Political Process." In *Theory, Text, Context. Issues in Greek Rhetoric and Oratory*, ed. C.L. Johnstone: 97–128. New York.

Johnstone, S. 1999. *Disputes and Democracy: the Consequences of Litigation in Ancient Athens*. Austin.

Joiner, C.W. 1975. "From the Bench." In *The Jury System in America: A Critical Overview*, ed. R.J. Simon: 143–157. London.

Jones, A.H.M. 1972. *The Criminal Courts of the Roman Republic and Principate*. Oxford.

Kahn, C.H. 1996. *Plato and the Socratic dialogue*. Cambridge.

Kalimtzis, K. 2000. *Aristotle on Political Enmity and Disease. An Inquiry into Stasis*. New York.

Kapparis, K. 1999. *Apollodoros "Against Neaira"* [*D* 59]. Berlin/New York.

Kapparis, K. 2014. "The Transmission of Apollodoros and the Edition of Mervin Dilts." In *Demosthenica Libris Manuscriptis Tradita: Studien zur Textüberlieferung des Corpus Demosthenicum*: 107–128. Vienna.

Kaster, R.A. 1983. “Notes on ‘Primary’ and ‘Secondary’ Schools in Late Antiquity.” *TAPhA* 113: 323–346.

Kaster, R.A. 1997. *Guardians of language: The grammarian and Society in Late Antiquity*. Berkeley/London.

Kaster, R.A. 2009. “Some Passionate Performances in Late Republican Rome.” In *A Companion to Greek and Roman Political Thought*, ed. R.K. Balot: 308–320. Chichester/Malden, MA.

Kaster, R.A. 2011. *Macrobius: Saturnalia Books 3–5*. Cambridge, MA.

Kelly, G.P. 2006. *A History of Exile in the Roman Republic*. Cambridge.

Kennedy, G.A. 1963. *The Art of Persuasion in Greece*. Princeton.

Kennedy, G.A. 1999. *Classical rhetoric and its Christian and secular tradition from ancient to modern times*. Chapel Hill/London.

Kerferd, G.B. 1981. *The sophistic movement*. Cambridge.

Kibrik, A.A. 2011. *Reference in discourse*. Oxford/New York.

Kindstrand, J.F. 1982. *The Stylistic Evaluation of Aeschines in Antiquity*. Uppsala.

Konstan, D. 1997. *Friendship in the classical world*. Cambridge.

Konstan, D. 2000. “Pity and the Law in Greek Theory and Practice.” *Dike* 4: 125–145.

Konstan, D. 2001. *Pity Transformed*. London.

Konstan, D. 2006. *The Emotions of the ancient Greeks: studies in Aristotle and classical literature*. Toronto/Buffalo/London.

Konstan, D. 2007. “Rhetoric and Emotion.” In *A Companion to Greek Rhetoric*, ed. I. Worthington: 411–425. Oxford.

Konstan, D. and N.K. Rutter. eds. 2003. *Envy, Spite and Jealousy: The Rivalrous Emotions in Ancient Greece*. Edinburgh.

Kosak, J.C. 2000. “Polis Nosousa: Greek ideas about the city and disease in the fifth century BC.” In *Death and Disease in the Ancient*, eds. V.M. Hope and E. Marshall: 35–54. London/New York.

Kremmydas, C. 2012. *Commentary on Demosthenes Against Leptines*. Oxford.

Kremmydas, C. 2013. “The discourse of deception and characterization in Attic Oratory.” *GRBS* 53: 51–89.

Kremmydas, C. 2016. “Demosthenes’ Philippics and the art of characterization for the Assembly.” In *La rhétorique du pouvoir: Une exploration de l’art oratoire délibératif grec*, Entretiens du Fondation Hardt no. 62, ed. M. Edwards: 41–78. Vandoeuvres/Genève.

Kurke, L. 1991. *The Traffic in Praise: Pindar and the Poetics of Social Economy*. Ithaca, NY.

Lambert, S.D. 2010. “Connecting with the Past in Lykourgan Athens.” In *Intentional History: Spinning Time in Ancient Greece*, eds. L. Foxhall, H.-J. Gehrke, and N. Luraghi: 225–238. Stuttgart.

Lambert, S.D. 2011. “Some Political Shifts in Lykourgan Athens.” In *Clisthène et Lycurgue d’Athènes*, eds. V. Azoulay and P. Ismard: 175–190. Paris.

Lambert, S.D. 2012. "Inscribing the Past in Fourth-Century Athens." In *Greek Notions of the Past in the Archaic and Classical Eras. History without Historians*, eds. J.M. Marincola, L.J. Llewellyn-Jones, and C.A. Maciver: 253–275. Edinburgh.

Lambert, S.D. 2015. Review of Johanna Hanink (2014) *Lycurgan Athens and the Making of Classical Tragedy. Cambridge classical studies*. Cambridge, *Bryn Mawr Classical Review* 2015.04.24.

Lanni, A.M. 1997. "Spectator Sport or Serious Politics? Ὀι περιεστηκότες and the Athenian Lawcourts." *JHS* 117: 183–189.

Lanni, A.M. 2009. "Social Norms in the Courts of Ancient Athens." *Journal of Legal Analysis* 1: 691–736.

Larsen, J.L. 2010. "Ancient Juries and Modern Judges: Originalism's Uneasy Relationship with the Jury." *Ohio State Law Journal* 71: 959–1002.

Lausberg, H. 1998. *Handbook of literary rhetoric*. Leiden/Boston/Köln.

Lavelle, B.M. 1992. "Herodotus, Scythian Archers, and the *Doryphoroi* of the Peistratids." *Klio* 74: 78–97.

Lavency, M. 1964. *Aspects de la logographie judiciaire attique*. Louvain.

Leach, E. 1990. "The Politics of Self-Presentation: Pliny's 'Letters' and Roman Portrait Sculpture." *CA* 9.1: 14–39.

Leão, D.F., Rhodes, P.J. and E.M. Harris. eds. 2010. *Law and drama in ancient Greece*. London.

Leigh, M.G.L. 2004. "Quintilian on the Emotions (*Institutio Oratoria* 6 Preface and 1–2)." *JRS* 94: 122–140.

Lévy, J.P. 1992. "Cicéron et la preuve judiciaire." In *Autour de la preuve dans les droits de l'antiquité*, ed. J.-P. Lévy: 23–33. Napoli.

Levy, R., Fedorenko, E. and E. Gibson. 2013. "The syntactic complexity of Russian relative clauses." *Journal of Memory and Language* 69: 461–495.

Lewis, D.M. 1967. "After the profanation of the mysteries." In *Ancient Society and Institutions. Studies Presented to Victor. Ehrenberg on his 75th Birthday*, ed. E. Badian: 177–191. New York.

Lewis, R.G. 2006. *Asconius: Commentaries on Speeches of Cicero*. Oxford.

Linderski, J. 1995. *Roman Questions: Selected Papers*. Stuttgart.

Linderski, J. 2007. *Roman Questions II: Selected Papers*. Stuttgart.

Lintott, A.W. 1992. *Judicial Reform and Land Reform in the Roman Republic: A New Edition, with Translation and Commentary, of the Laws from Urbino*. Cambridge.

Lintott, A.W. 2004. "Legal procedure in Cicero's time." In *Cicero the Advocate*, eds. J. Powell and J. Paterson: 61–78. Oxford.

Lintott, A.W. 2008. *Cicero as Evidence: a Historian's Companion*. Oxford.

Liva, S. 2009. "Sulla funzione del quaesitor. Testi e ipotesi." In *La repressione criminale nella Roma repubblicana fra norma e persuasione*, ed. B. Santalucia: 115–125. Pavia.

Lofberg, J.O. 1976. Sycophancy in Athens. Chicago.

López Eire, A. 2007. "Rhetoric and Language." In *Blackwell Companion to Greek Rhetoric*, ed. I. Worthington: 336–349. Malden, MA.

Loraux, N. 2006. *The invention of Athens: the funeral oration in the classical city*. New York.

Lortzing, Franz. 1863. *De orationibus quas Demosthenes pro Apollodoro scripsisse fertur*. Berlin.

Luginbill, R.D. 1999. *Thucydides on War and National Character*. Boulder, CO.

Luke, J. 1994. "'Kratos' and the 'Polis'." *G&R* 41: 23–32.

Lussky, E.A. 1928. *The Appeal to the Emotions in the Judicial Speeches of Cicero as Compared with the Theories Set Forth on the Subject in the De Oratore*. PhD Diss. Minnesota.

MacDonald, C. 1957. "The Lex Fufia of 59 B.C." *CR* 7: 198.

MacDowell, D. 1976. "*Hybris* in Athens." *G&R* 23: 14–31.

MacDowell, D. 1978. *The Law in Classical Athens*. London.

MacDowell, D. 1986. "The Law of Periander on Symmories." *CQ* 36: 438–449.

MacDowell, D. 1990. *Against Meidias. Oration 21*. Oxford.

MacDowell, D. ed. 2000. *Demosthenes: On the False Embassy* (*Oration 19*). Oxford.

MacDowell, D. ed. 2009. *Demosthenes the Orator*. Oxford.

McGillivray, B. and A. Vatri. 2015. "Computational valency lexica for Latin and Greek in use: a case study of syntactic ambiguity." *Journal of Latin Linguistics* 14: 101–126.

Mackie, C.J. ed. 2004. *Oral Performance and its Context*. Leiden/Boston.

MacLeod, C. 1977. "Thucydides' Plataean Debate." *GRBS* 18: 227–246 [= (1983), *Collected Essays*, Oxford, 103–123].

MacLeod, C. 1978. "Reason and Necessity: Thucydides 3.9–14, 37–48." *JHS* 98: 64–78 [= (1983), *Collected Essays*, Oxford, 88–102].

Madden, T.F. 1992. "Column of Delphi in Constantinople: Placement, Purposes, and Mutilations." *Byzantine and Modern Greek Studies* 16: 111–145.

Mader, G. 2004. "Praise, Blame and Authority: Some Strategies of Persuasion in Demosthenes, *Philippic* 2." *Hermes* 132: 56–69.

Mader, G. 2007. "Dramatizing *Didaxis*: Aspects of Demosthenes' 'Periclean' Project." *CP* 102: 155–179.

Malcovati, E. 1976. *Oratorum Romanorum Fragmenta Liberae Rei Publicae*. 4th ed. Torino.

Madyda, W. 1953. *De Donato histrionum praeceptore*. Zaklad im Ossoliskich.

Manuwald, G. 2013. "Oratory on the Stage in Republican Rome." In *Hellenistic Oratory: Continuity and Change*, eds. C. Kremmydas and K. Tempest: 277–294. Oxford.

Marinone, N. 2004. *Cronologia Ciceroniana*. 2nd ed. Rome and Bologna.

Marshall, B.A. 1985. *A Historical Commentary on Asconius*. Columbia, MO.

Martin, G. 2006. "Forms of address in Athenian courts." *Museum Helveticum* 63: 75–88.

May, J.M. 1994. "Persuasion, Ciceronian Style." *Classical Outlook* 71: 37–41.

Mayer, R. 2003. "Pliny and *Gloria Dicendi.*" *Arethusa* 36.2: 227–234.

McDermott, W.C. 1977. "The Verrine Jury." *RhM* 120: 64–75.

McDonnell, M. 1987. "The speech of Numidicus at Gellius, *N.A.* 1.6." *AJP* 108: 81–94.

McDonnell, M. 2006. *Roman Manliness*: Virtus *and the Roman Republic*. Cambridge.

Meiggs, R. 1972. *The Athenian Empire*. Oxford.

McNeill, D., Cassell, J. and E.T. Levy. 1993. "Abstract deixis." *Semiotica* 95: 5–19.

Mirhady, D.C. and C. Schwarz. 2011. "Dikastic Participation." *CQ* 61: 744–748.

Mommsen, T. 1899. *Römisches Strafrecht*. Berlin.

Moreau, P. 1982. *Clodiana Religio: un procès politique en 61 avant J.C.* Paris.

Morello, R. 2003. "Pliny and the Art of Saying Nothing." *Arethusa* 36.2: 187–209.

Morstein-Marx, R. 2004. *Mass Oratory and Political Power in the Late Roman Republic*. Cambridge.

Mossé, C. 1987. "Égalité démocratique et inegalités sociales: le débat à Athènes au IVème siècle." *Metis* 2: 165–176 and 195–206.

Murray, A.T. 1939. *Demosthenes, Against Timocrates*. London/Cambridge.

Murray G.M. 1947. *Greek studies*. Oxford.

Murray, O. 1990. ed. *Sympotica: A Symposium on the Symposion*. Oxford.

Naiden, F.S. 2004. "Supplication and the law." In *The Law and the Courts in Ancient Greece*, eds. E.M. Harris and L. Rubinstein: 71–92. London.

Naiden, F.S. 2006. *Ancient Supplication*. Oxford.

Narducci, E. 1997. *Cicerone e l'eloquenza romana: Retorica e progetto culturale*. (Quadrante, 86.) Rome/Bari.

Nesselrath, H.-G. 1990. *Die Attische Mittlere Komödie*. Berlin.

Nesselrath, H.-G. 1997. "The Polis of Athens in Middle Comedy." In *The City as Comedy: Society and Representation in Athenian Drama*, ed. G.W. Dobrov: 271–288. Chapel Hill.

Nicolet, C. 1966. *L'Ordre Équestre à l'Époque Républicaine (313–343 av. J.-C.)*. Vol. 1. Paris.

Nicolet, C. 1974. *L'Ordre Équestre à l'Époque Républicaine (313–343 av. J.-C.)*. Vol. 2. Paris.

Nightingale, A.W. 2004. *Spectacles of Truth in Greek Philosophy: Theoria in Its Cultural Context*. Cambridge.

Nocchi, F.R. 2012. Tecniche teatrali e formazione dell'oratore in Quintiliano. Berlin.

Noreña, C.F. 2011. "Self-Fashioning in the *Panegyricus*." In *Pliny's Praise: The* Panegyricus *in the Roman World*, ed. P. Roche: 29–44. Cambridge.

Nouhaud, M. 1982. *L'utilisation de l'histoire par les orateurs attiques*. Paris.

Noussia-Fantuzzi, M. 2010. *Solon the Athenian, the poetic fragments*. Leiden.

Nünlist, R. 2009. *The Ancient Critic at Work*. Cambridge.

Ober, J. 1989. *Mass and Elite in Democratic Athens: Rhetoric, Ideology, and the Power of the People*. Princeton.

Ober, J. 1996. *The Athenian Revolution: Essays on Ancient Greek Democracy and Political Theory*. Princeton.

Ober, J. 1998. *Political Dissent in Democratic Athens: Intellectual Critics of Popular Rule*. Princeton.

Ober, J. and B.S. Strauss. 1990. "Drama, Political Rhetoric, and the Discourse of Athenian Democracy." In *Nothing to do with Dionysos? Athenian Drama in its Social Context*, eds. J.J. Winkler and F.I. Zeitlin: 237–270. Princeton.

Oesterreicher, W. 1997. "Types of Orality in Text." In *Written voices, spoken signs: tradition, performance, and the epic text*, eds. E.J. Bakker and A. Kahane: 190–214. Cambridge, MA.

Ogden, D. 1996. *Greek Bastardy*. Oxford.

Olding, G.G. 2007. "Myth and Writing in Aeschines' *Against Timarchus*." In *Politics of Orality*, ed. C.R. Cooper: 155–170. Leiden.

Olson, Greta. 2014. *Narration and Narratives in Legal Discourse*. URL: http://www.lhn.uni-hamburg.de/article/narration-and-narrative-legal-discourse

Ooteghem J. Van. 1964. "Marius et Métellus." *Les études classiques* 32: 147–161.

Osborne, R. 1985. "Law in action in classical Athens." *JHS* 105: 40–58.

Osgood, J. 2005. "Cicero's *Pro Caelio* 33–34 and Appius Claudius' *Oratio de Pyrrho*." *CP* 100: 355–358.

Ostwald, M. 1986. *From Popular Sovereignty to the Sovereignty of the Law: Law, Society and Politics in Fifth-Century Athens*. Berkeley.

O'Sullivan, N. 1992. *Alcidamas, Aristophanes, and the Beginnings of Greek Stylistic Theory*. Stuttgart.

Palmer, Beth. 2011. "Theatricality and performance in Victorian literature." *Victorian Network Volume* 3, Number 2.1–6.

Panayotakis, C. 2005. "Nonverbial behaviour on the Roman Stage." In *Body Language in the Greek and Roman Worlds*, ed. D.L. Cairns: 175–194. Swansea.

Papadodima, E. 2013. "The Battle of Marathon in Fifth-Century Drama." In *Marathon—2,500 Years*, eds. C. Carey and M.J. Edwards: 143–154. London.

Parker, R. 1996. *Athenian Religion: a history*. Oxford.

Paul, G.M. 1984. *A Historical Commentary on Sallust's Bellum Jugurthinum*. Liverpool.

Patimo, V.M. 2009. *La Pro Cluentio di Cicerone: introduzione e commento dei §§ 1–81. Bd. 1*. Nordhausen.

Pavlou, M. 2013. "Attributive discourse in the speeches of Thucydides." In *Thucydides between History and Literature*, eds. A. Tsakmakis and M. Tamiolaki: 409–433. Berlin/Boston.

Pearson, L. 1966. "Apollodorus, the Eleventh Attic Orator." In *The Classical Tradition: Literary and Historical Studies in Honor of Harry Caplan*, ed. L. Wallach: 347–359. Ithaca, NY.

Pearson, L. 1968. "Cicero's debt to Demosthenes—The Verrines." *Pacific Coast Philology* Vol. III: 49–54.

Pearson, L. 1975. "The Development of Demosthenes as a Political Orator." *Phoenix* 29: 95–109.

Pearson, L. 1978. "Hiatus and Its Effect in the Attic Speech-Writers." *TAPhA* 108: 131–145.

Peek, W. 1962. "Griechische Weihgedichte aus dem Asklepieion von Epidauros." *Wiss. Z. Univ. Halle, gesellschafts- und sprachwiss. Reihe* 11: 1001–1014.

Pelling, C.P.R. 2002. *Plutarch and History: Eighteen Studies*. Swansea.

Pelling, C.P.R. 2012. "Aristotle's *Rhetoric*, the *Rhetorica ad Alexandrum* and the speeches in Herodotus and Thucydides." In *Thucydides and Herodotus*, eds. D. Lateiner and E. Foster: 281–315. Oxford.

Pérez Gómez, L. 1990. "Quintiliano e la semiótica del teatro." *Emerita* 59: 99–111.

Perlman, S. 1964. "Quotations from Poetry in Attic Orators of the Fourth Century." *AJP* 85: 155–172.

Petrie, A. 1922. *Lycurgus. The speech against Leocrates*. Cambridge.

Petrone, G. 2008. "Modelli drammatici per la retorica." In *La riflessione sul teatro nella cultura romana*, eds. G. Aricò and M. Rivoltella: 159–170. Milan.

Pirie, J.W. and W.M. Lindsay. 1930. *Glossaria Latina iussu Academiae Britannicae edita* vol. IV: Placidi Glossae. Paris.

Pina Polo, F. 1989. *Las contiones civiles y militares en Roma*. Zaragoza.

Pina Polo, F. 2013. "Foreign Eloquence in the Roman Senate." In *Community and Communication. Oratory and Politics in the Roman Republic*, eds. C. Steel and H. van der Blom: 247–266. Oxford.

Pittenger, M.R.P. 2008. *Contested Triumphs: Politics, Pageantry, and Performance in Livy's Republican Rome*. Berkeley/Los Angeles/London.

Pocock, L. 1926. *A commentary on Cicero* In Vatinium: *with an historical introduction and appendices*. London.

Powell, J.G.F. and J. Paterson. eds. 2004. *Cicero the Advocate*. Oxford.

Rabinowitz, P.J. 1977. "Truth in Fiction: A Reexamination of Audiences." *Critical Inquiry* 4: 121–141.

Rabbie, E. 2010. "Wit and Humour in Roman Rhetoric." In *A Companion to Roman Rhetoric*, eds. W. Dominik and J. Hall: 207–217. Oxford.

Rackham, H. transl. 1942. *Cicero: De Oratore Book III; De Fato; Paradoxa Stoicorum; De Partitione Oratoria*. Loeb Classical Library. Cambridge, MA/London.

Raubitschek, A.E. 1973. "The Speech of the Athenians at Sparta." In *The Speeches in Thucydides: A Collection of Original Studies with a Bibliography*, ed. P.A. Stadter: 32–48. Chapel Hill.

Rawson, E. 1974. "Religion and Politics in the late second century B.C. at Rome." *Phoenix* 28: 193–212.

Reckford, K.J. 1987. *Aristophanes' Old-and-new Comedy: Six essays in perspective*. Chapell Hill.

Reden, S. von and S. Goldhill. 1999. "Plato and the performance of dialogue." In *Performance culture and Athenian democracy*, eds. S. Goldhill and R. Osborne: 257–289. Cambridge.

Reinhardt, T. and M. Winterbottom. eds. 2006. *Quintilian, Institutio Oratoria Book 2*. Oxford.

Revermann, M. 2006a. *Comic Business: theatricality, dramatic technique, and performance contexts of Aristophanic Comedy*. Oxford.

Revermann, M. 2006b. "The competence of theatre audiences in fifth and fourth century Athens." *JHS* 126: 99–124.

Rhodes, P.J. 2004. "Keeping to the Point." In *The Law and the Courts in Ancient Greece*, eds. L. Rubinstein and E.M. Harris: 137–158. London.

Rich, J.W. 2014. "The Triumph in the Roman Republic: Frequency, Fluctuation and Policy." In *The Roman Republican Triumph: Beyond the Spectacle*, eds. C.H. Lange and F.J. Vervaet: 197–258. Rome.

Richlin, A. 1997. "Gender and Rhetoric: Producing Manhood in the Schools." In *Roman Eloquence: Rhetoric in Society and Literature*, ed. W.J. Dominik: 90–110. London.

Richlin, A. 2011. "Old Boys: Teacher-Student Bonding in Roman Oratory." *CW* 15.1: 91–107.

Riddell, J. 1973. *The Apology of Socrates*. New York.

Rideout, Christopher J. 2008. "Storytelling, Narrative Rationality, and Legal Persuasion." *The Journal for the Legal Writing Institute* 24: 53–86.

Riggsby, A.M. 1995. "Pliny on Cicero and Oratory: Self-Fashioning in the Public Eye." *AJPh* 116.1: 123–135.

Riggsby, A.M. 1999. *Crime and Community in Republican Rome*. Austin.

Roisman, J., Worthington, I., and R. Waterfield. 2015. *Lives of the Attic Orators*: *Texts from Pseudo-Plutarch, Photius and the Suda*. Oxford.

Romilly, J. de. 1958/2011. *La crainte et l'angoisse dans le théâtre d'Eschyle*. Paris.

Ronconi, A. 1970. "Sulla fortuna di Plauto e di Terenzio nel mondo romano." *Maia* 22: 19–37 [repr. as: "La critica plautina e terenziana nel mondo romano." In A. Ronconi, *Interpretazioni letterarie nei classici*. Florence 1972, 142–168].

Roselli, D.K. 2011. *Theater of the people: spectators and society in ancient Athens*. Austin.

Rosillo Lopez, C. 2013. "The common (*mediocris*) orator of the late Republic: the Scribonii Curiones." In *Community and Communication: Oratory and Politics in Republican Rome*, eds. C. Steel and H. van der Blom: 287–298. Oxford.

Rosivach, V.J. 1987. "Autochthony and the Athenians." *CQ* 37: 294–306.

Rotroff, S.I. and J.H. Oakley. 1992. *Debris from a Public Dining Place in the Agora*. Hesperia Supplement 25. Princeton.

Ross Taylor, L. 1966. *Roman Voting Assemblies from the Hannibalic War to the Dictatorship of Caesar*. Ann Arbor.

Rotondi, G. 1912. *Leges publicae populi romani: elenco cronologico con una introduzione sull'attività legislativa dei comizi romani*. Milan. [1962 reprint used]

Rubinstein, L. 2000. *Litigation and Cooperation: Supporting Speakers in the Courts of Classical Athens*. Stuttgart.

Rubinstein, L. 2004. "Stirring up dicastic anger." In *Law, Rhetoric, and Comedy in Classical Athens. Essays in honour of Douglas M. MacDowell*, eds. D.L. Cairns and R.A. Knox: 187–203. Swansea.

Rubinstein, L. 2005. "Differentiated rhetorical strategies in the Athenian courts." In *The Cambridge Companion to Ancient Greek Law*, eds. M. Gagarin and D. Cohen: 129–145. Cambridge.

Rubinstein, L. 2012. "Evoking Anger through Pity in Attic Oratory." In *Unveiling Emotions: Sources and Methods for the Study of Emotions in the Greek World*, ed. A. Chaniotis: 135–165. Stuttgart.

Rubinstein, L. 2013a. "Spoken Words, Written Submissions, and Diplomatic Conventions: The Importance and Impact of Oral Performance in Hellenistic Inter-polis Relations." In *Hellenistic Oratory: continuity and change*, eds. C. Kremmydas and K. Tempest: 166–199. Oxford.

Rubinstein, L. 2013b. "Evoking anger through pity: portraits of the vulnerable and defenceless in Attic oratory." In *Unveiling Emotions II*, eds. A. Chaniotis and P. Ducrey: 135–165. Stuttgart.

Russell, D.A. 1964. *'Longinus' On the Sublime*. Oxford.

Russell, D.A. 1981. *Criticism in antiquity*. Berkeley.

Russell, D.A. 1990. "*Ēthos* in Oratory and Rhetoric." In *Characterization and Individuality in Greek Literature*, ed. C.P.R. Pelling: 197–212. Oxford.

Russell, D.A. 2001. *Quintilian: The Orator's Education, Books 11–12*. Cambridge, MA.

Rutherford, R. 2012. *Greek Tragic Style: Form, Language and Interpretation*. Cambridge.

Rutledge, S.H. 2010. "Oratory and Politics in the Empire." In *A Companion to Roman Rhetoric*, eds. W.J. Dominik and J. Hall: 109–121. Oxford.

Saïd, S. 2003. "Envy and Emulation in Isocrates." In *Envy, Spite and Jealousy: The Rivalrous Emotions in Ancient Greece*, eds. D. Konstan and N.K. Rutter: 217–234. Edinburgh.

Sanders, E. 2012. "He is a liar, a bounder and a cad: The arousal of emotions in Attic forensic oratory." In *Unveiling Emotions: Sources and Methods for the Study of Emotions in the Greek World*, ed. A. Chaniotis: 359–387. Stuttgart.

Sanders, E. 2014. *Envy and Jealousy in Classical Athens: A Socio-Psychological Approach*. Oxford.

Scalais, R. 1951. "Cicéron Avocat." *Les Études Classiques* 19: 190–208.

Schaefer, A.D. 1885–1887. *Demosthenes und seine Zeit*. Leipzig.

Schaps, D. 1977. "The Woman Least Mentioned: Etiquette and Women's Names." *CQ* 27.2: 323–330.

Schechner, R. 2002. "Foreword: fundamentals of Performance Studies." In *Teaching Performance Studies*, ed. N. Stucky and C. Wimmer: ix–xii. Carbondale.

Schechner, R. 2006. *Performance Studies: an introduction*. London/New York.

Scheppele, K. 1989. "Foreword: Telling Stories." *Michigan Law Review* 87: 2073, 2083–2098.

Schloemann, J. 2002. "Entertainment and democratic distrust: the audience's attitudes towards oral and written oratory in classical Athens." In *Epea and Grammata: Oral and Written Communication in Ancient Greece*, eds. I. Worthington and J.M. Foley: 133–146. Leiden/Boston.

Schmitt-Pantel, P. 1992. *La cité au banquet: Histoire des repas publique dans les cités grecques*. Rome.

Schramm, M. 2005. "Σύνδεσμος und ἄρθρον in Aristoteles' *Poetik*." *Glotta* 81: 187–213.

Schwenk, C. 1985. *Athens in the Age of Alexander the Great: The Dated Laws and Decrees of the Lykourgan Era 338–322 B.C.* Chicago.

Scollon, R. and S. Scollon. 1995. "Somatic Communication: How Useful is 'Orality' for the Characterization of Speech Events and Cultures?" In *Aspects of Oral Communication*, ed. U.M. Quasthoff: 19–29. Berlin/New York.

Serafim, A. 2015. "Making the Audience: *Ekphrasis* and Rhetorical Strategy in Demosthenes 18 and 19." *CQ* 65: 96–108.

Serafim, A. 2017. *Attic Oratory and Performance*. New York/London.

Shackleton Bailey, D.R. 1965. *Cicero's Letters to Atticus: Volume 1*. Cambridge.

Shackleton Bailey, D.R. 1980. *Cicero: Epistulae ad Quintum Fratrem et M. Brutum*. Cambridge.

Shackleton Bailey, D.R. 1999. *Cicero: Letters to Atticus. Volumes I–IV*. Cambridge, MA.

Shattuck-Hufnagel, S. and A.E. Turk. 1996. "A prosody tutorial for investigators of auditory sentence processing." *Journal of Psycholinguistic Research* 25: 193–247.

Shatzman, I. 1975. *Senatorial Wealth and Roman Politics*. Brussels.

Shear, J.L. 2002. *Polis and Revolution: Responding to Oligarchy in Classical Athens*. Cambridge.

Sherwin-White, A.N. 1968. *The Letters of Pliny: A Historical and Social Commentary*. Oxford.

Sherwin-White, A.N. 1982. "The *Lex Repetundarum* and the Political Ideas of Gaius Gracchus." *JRS* 72: 18–31.

Sigg, Johannes. 1872–1873. "Der Verfasser neun angeblich von Demosthenes für Apollodor geschriebenen Reden." *Supplementbande der Jahrbücher für Klassische Philologie* 6: 396–434.

Sinos, R.H. 1998. "Divine Selections: Epiphany and Politics in Archaic Greece." In *Cultural Poetics in Archaic Greece: Cult, Performance, Politics*, eds. C. Dougherty and L. Kurke: 73–91. Oxford.

Skinner, Q. 2002. *Visions of Politics* V. 1 *: Regarding Method*. Cambridge.

Slings, S.R. 1992. "Written and spoken language: an exercise in the pragmatics of the Greek sentence." *CP* 87: 95–109.

Sluiter, I. 2016. "Obscurity." In *Canonical Texts and Scholarly Practices*, eds. A. Grafton and G.W. Most: 34–51. Cambridge.

Solmsen, F. 1938. "Aristotle and Cicero on the Orator's Playing Upon the Feelings." *CP* 33: 390–404.

Sonnino, M. 2010. *Euripidis Erechthei quae extant*. Florence.

Spatharas, D. 2008. "Γνώση, *δόξα και απάτη στον* Γοργία." In *Φιλοσοφία και ρητορική στην κλασική Αθήνα*, ed. Ch. Balla: 150–171. Herakleio.

Spatharas, D. 2011. "Self-praise and Envy: From Rhetoric to the Athenian Courts." *Arethusa* 44: 199–219.

Spatharas, D. 2014. "Φθόνος, ρητορική *και* lifestyle *στην κλασική* Αθήνα." In *Ιδιωτικός βίος και δημόσιος λόγος στην ελληνική αρχαιότητα και στον Διαφωτισμό*, eds., L. Athanassaki, A. Nikolaidis, and D. Spatharas: 89–136. Herakleio.

Stadter, P.A. ed. 1973. *The Speeches in Thucydides: A Collection of Original Studies with a Bibliography*. Chapel Hill.

Stahl, H.P. 1973. "Speeches and Course of Events in Books Six and Seven of Thucydides." In *The Speeches in Thucydides: A Collection of Original Studies with a Bibliography*, ed. P.A. Stadter: 60–77. Chapel Hill.

Steck, U. 2006. *Der Zeugenbeweis in den Gerichtsreden Ciceros*. Frankfurt.

Steel, C. 2007. "Name and shame? Invective against Clodius and others in the post-exile speeches." In *Cicero on the attack. Invective and subversion in the orations and beyond*, ed. J. Booth: 105–128. Swansea.

Steel, C. 2013a. *The End of the Roman Republic, 146–144 B.C.: Conquest and Crisis*. Edinburgh.

Steel, C. 2013b. "Pompeius, Helvius Mancia, and the Politics of Public Debate." In *Community and Communication: Oratory and Politics in Republican Rome*, eds. C. Steel and H. van der Blom: 151–159. Oxford.

Steinbock, B.K. 2013. "Contesting the Lessons from the Past: Aeschines' Use of Social Memory." *TAPA* 143: 65–103.

Steiner, A. 2002. "Private and Public: Links between *Symposion* and *Syssition* in Fifth-Century Athens." *CA* 21: 347–390.

Sternberg, R.H. 2005. *Pity and Power in Ancient Athens*. Cambridge.

Stevens, E.B. 1944. "Some Attic Commonplaces of Pity." *AJP* 65: 1–25.

Stokes, M.C. 1997. *Plato. Apology of Socrates*. Warminster.

Storey, I.C. 2003. *Eupolis: Poet of Old Comedy*. Oxford.

Storey, I.C. 2011. *Fragments of Old Comedy*. Cambridge, MA.

Sutton, E. W and H. Rackham. transl. 1948. *Cicero: De Oratore Books I, II*. Loeb Classical Library. Cambridge, MA/London.

Tacon, J. 2001. "Ecclesiastic 'Thorubos': Interventions, Interruptions, and Popular Involvement in the Athenian Assembly." *G&R* 48: 173–192.

Tan, J. 2013. "Publius Clodius and the Boundaries of the *contio*." In *Community and*

Communication. Oratory and Politics in the Roman Republic, eds. C. Steel and H. van der Blom: 117–132. Oxford.

Tannen, D. 2007. *Talking voices. Repetition, dialogue, and imagery in conversational discourse*. 2nd ed. Cambridge.

Taplin, O. 1972. "Aeschylean Silences and Silences in Aeschylus." *HSCP* 76: 57–97.

Taplin, O. 1985. *Greek Tragedy in Action*. London.

Tatum, W.J. 1999. *The patrician tribune: Publius Clodius Pulcher*. Chapel Hill.

Tatum, W.J. 2013. "Campaign Rhetoric." In *Community and Communication: Oratory and Politics in Republican Rome*, eds. C. Steel and H. van der Blom: 133–150. Oxford.

Tempest, K. 2007. "Saints and Sinners: Some Thoughts on Characterisation in Cicero's Verrines and the Attic Orators." In *Sicilia Nutrix Plebis Romanae*, BICS *Suppl.* 97, ed. J. Prag: 19–36. London.

Tempest, K. 2013. "Staging a Prosecution: Aspects of Performance in Cicero's *Verrines*." In *Profession and Performance: Aspects of Oratory in the Greco-Roman World*, BICS *Suppl.* 123, eds. C. Kremmydas, J. Powell, and L. Rubinstein: 41–72. London.

Thomadaki, M. 1989. "La Mise en scéne du théâtre de Térence dans les commentaires de Donat." *Dioniso* 59: 365–372.

Thomas, R. 1989. *Oral Tradition and Written Record in Athens*. Cambridge.

Thomas, R. 2000. *Herodotus in context: ethnography, science and the art of persuasion*. Cambridge.

Thomas, R. 2003. "Prose Performance Texts: Epideixis and Written Publication in the Late Fifth and Early Fourth Centuries." In *Written Texts and the Rise of Literate Culture in Ancient Greece*, ed. H. Yunis: 162–188. Cambridge.

Thomas, R. 2011. "'And you, the demos, made an uproar': Performance, Mass Audiences and Text in the Athenian Democracy." In *Sacred Words: Orality, Literacy and Religion*, eds. A.P.M.H. Lardinois, J.H. Blok, and M.G.M. van der Poel: 161–187. Leiden.

Thompson, W. 1970. "Isaeus 6: the Historical Circumstances." *CR* 20: 1–4.

Todd, S. 1990. ""Lady Chatterley's Lover" and the Attic Orators: the social composition of the Athenian jury." *JHS* 110: 146–173

Todd, S.C. 2007. *Lysias Commentary 1–11*. Oxford.

Tompkins, D.P. 1972. "Individual Characterization in Thucydides: Nicias and Alcibiades." *YCS* 22: 181–214.

Tompkins, D.P. 1993a. "Thucydides Constructs his Speakers: The Case of Diodotus." *Electronic Antiquity*: 1.1.

Tompkins, D.P. 1993b. "Archidamus and the Question of Characterization in Thucydides." In *NOMODEIKTES*: *Greek Studies in Honor of Martin Ostwald*, eds. R.M. Rosen and J. Farrell: 99–111. Ann Arbor.

Tompkins, D.P. and R. Thomas. 2003. "Prose performance texts: *Epideixis* and Written Publication in the late 5th. and early 4th. c." In *Written Texts and the Rise of Literate Culture in Ancient Greece*, ed. H. Yunis: 162–188. Cambridge.

Trevett, J.C. 1991. "The Date of [Demosthenes] 49: A Re-Examination." *Phoenix* 45: 21–27.

Trevett, J.C. 1995. "The Use of Direct Speech by the Attic Orators." In *Lo spettacolo delle voci*, eds. F. de Martino and A.H. Sommerstein: 125–145. Bari.

Trevett, J.C. 2011. *Demosthenes, Speeches 1–17*. Austin.

Tzanetou, A. 2005. "A Generous City: Pity in Athenian Oratoty and Tragedy." In Pity and Power in Ancient Athens, ed. R.H. Sternberg: 98–122. Cambridge.

Ullman, B.L. 1942. "History and Tragedy." *TAPA* 72: 25–53.

Usher, S. 1965. "Individual Characterisation in Lysias." *Eranos* 63: 99–119.

Usher, S. 1974. *Dionysius of Halicarnassus. The Critical Essays vol. 1*. Cambridge, MA/ London.

Usher, S. 1993. *Greek Orators—V: Demosthenes, On the Crown*. Warminster.

Usher, S. 1999. *Greek Oratory: Tradition and Originality*. Oxford.

Vasaly, A. 1993. *Representations: Images of the World in Ciceronian Oratory*. Berkeley.

Vatri, A. 2012. "The Physiology of Ancient Greek Reading." *CQ* 62: 633–647.

Vatri, A. 2015. "Ancient Greek Writing for Memory: Textual Features as Mnemonic Facilitators." *Mnemosyne* 68: 750–773.

Vatri, A. 2016. "Between Song and Prose: The Meaning(s) of *Harmonia* in Aristotle's *Rhetoric* and *Poetics*." *Rhetorica* 34: 372–392.

Vatri, A. 2017. *Orality and Performance in Classical Attic Prose: A Linguistic Approach*. Oxford.

Vegetti, M. 1983. "Metafora politica e imagine del corpo negli scritti ippocratici." In *Formes de pensée dans la collection Hippocratique*, eds. F. Lasserre and P. Mudry: 459–469. Genève.

Vervaet, F.J. 2012. "Triumph." In *Encyclopaedia of Ancient History*, eds. R. Bagnall, K. Brodersen, C. Champion, A. Erskine, and S. Huebner. Oxford.

Vervaet, F.J. 2014. *The High Command in the Roman Republic: the Principle of the* summum imperium auspiciumque *from 509 to 19 B.C.E.* Stuttgart.

Veyne, P. 1990. *Bread and Circuses: Historical Sociology and Political Pluralism*, transl. B. Pearce. London.

Volonaki, E. 2014. "Narratological elements in epideictic oratory". *Platon* 59: 16–33.

Wagner, M. and D.G. Watson. 2010. "Experimental and theoretical advances in prosody: A review." *Language and Cognitive Processes* 25: 905–945.

Wagner, P., Malisz, Z. and S. Kopp. 2014. "Gesture and speech in interaction: An overview." *Speech Communication* 57: 209–232.

Walton, D. 1999. *Appeal to Pity: Argumentum in Misericordiam*. Albany.

Webb, R. 1997. "Imagination and the Arousal of the Emotions in Greco-Roman Rhetoric." in *The Passions in Roman Thought and Literature*, eds. S.M. Braund and C. Gill: 112–127. Cambridge.

Webb, R. 2009a. "Eschine et le passé athénien: narration, imagination et construction de la mémoire." *CEA* 46: 129–147.

Webb, R. 2009b. *Ekphrasis, Imagination and Persuasion in Ancient Rhetorical Theory and Practice*. Farnham.

Weische, A. 1972. *Ciceros Nachahmung der attischen Redner*. Heidelberg.

Weische, A. 1989. "Plinius d. J. und Cicero: Untersuchungen zur römischen Epistolographie in Republik und Kaiserzeit." *ANRW* II.33.1: 375–386.

Weiss, M. 1996. "An Oscanism in Catullus 53." *CP* 91: 353–359.

Wessner, P. 1902. *Aeli Donati qvod fertvr Commentvm Terenti*. Lipsiae.

West, W.C. 1973. "The Speeches in Thucydides: A Description and Listing." In *The Speeches in Thucydides: A Collection of Original Studies with a Bibliography*, ed. P.A. Stadter: 3–15. Chapel Hill.

Westlake, H.D. 1968. *Individuals in Thucydides*. Cambridge.

Westlake, H.D. 1973. "The settings of Thucydidean Speeches." In *The Speeches in Thucydides: A Collection of Original Studies with a Bibliography*, ed. P.A. Stadter: 90–108. Chapel Hill.

Westwood, G. 2013. *History and the making of the orator in Demosthenes and Aeschines*. PhD Diss. Oxford.

Whitehead, D. 2000. *Hypereides. The Forensic Speeches*. Oxford.

Whitton, C. 2013. *Pliny the Younger: Epistles Book II*. Cambridge.

Wickkiser, B.L. 2008. *Asklepios, Medicine, and the Politics of Healing in Fifth Century Greece*. Baltimore.

Williams, K.F. 2006. "Pliny and the Murder of Larcius Macedo." *CJ* 101: 409–424.

Wilson, P.J. 1991. "Demosthenes 21 (*Against Meidias*): Democratic Abuse." *PCPS* 37: 164–195.

Wilson, P.J. 1996. "Tragic Rhetoric: The Use of Tragedy and the Tragic in the Fourth Century." In *Tragedy and the Tragic: Greek Theatre and Beyond*, ed. M.S. Silk: 310–331. Cambridge.

Wilson, P.J. 2000. *The Athenian Institution of the* Khoregia: *The Chorus, the City, and the Stage*. Cambridge.

Winterbottom, M. 1964. "Quintilian and the *Vir Bonus*." *JRS* 54: 90–97.

Winterbottom, M. 1970. *Institutionis oratoriae libri duodecim*: recognovit brevique adnotatione critica instruxit M.W. OCT. Oxonii (Oxford).

Winterbottom, M. 1982. "Schoolroom and courtroom." In *Rhetoric Revalued: papers from the International Society for the History of rhetoric*, ed. B. Vickers: 59–70. New York.

Winterbottom, M. 2004. "Perorations." In *Cicero the Advocate*, ed. J. Powell and J. Paterson: 215–230. Oxford.

Wiseman, T.P. 1971. *New Men in the Roman Senate 139 B.C.–A.D. 14*. Oxford

Wiseman, T.P. 2009. *Remembering the Roman People: essays on Late-Republican Politics and Literature*. Oxford.

Wisse, J. 1989. *Ethos and Pathos from Aristotle to Cicero*. Amsterdam.

Wohl, V. 2010. *Law's cosmos*. Cambridge.

Wolpert, A.O. 2003. "Addresses to the jury in the Attic orators." *AJP* 124: 537–555.

Woodhead, A.G. 1960. "Thucydides' Portrait of Cleon." *Mnemosyne* 13: 289–317.

Worman, N. 2008. *Abusive Mouths in Classical Athens*. Cambridge.

Worthington, I. 1991. "Greek Oratory, Revision of Speeches and the Problem of Historical Reliability." *C&M* 42: 55–74.

Worthington, I. 1994. *Persuasion: Greek Rhetoric in Action*. London.

Worthington, I. 2004. "Oral Performance in the Athenian Assembly and the Demosthenic *Prooemia*." In *Oral Performance and Its Context*, ed. C.M. Mackie: 129–143. Leiden.

Worthington, I. 2006. *Demosthenes, Speeches 60 and 61, Prologues, Letters*. Austin.

Worthington, I. 2007. "Rhetoric and Politics in Classical Greece: Rise of the *Rhêtores*." In *Blackwell Companion to Greek Rhetoric*, ed. I. Worthington: 255–271. Malden, MA.

Worthington, I. 2013. *Demosthenes of Athens and the Fall of Classical Greece*. Oxford.

Worthington, I., Cooper, C.R. and E.M. Harris. 2001. *Dinarchus, Hyperides, & Lycurgus*, The Oratory of Classical Greece, vol. 5, Austin.

Wyse, W. 1904. *The Speeches of Isaeus*. Cambridge.

Xanthakis-Karamanos, G. 1979. "The Influence of Rhetoric on Fourth-Century Tragedy." *CQ* 29: 66–76.

Yakobson, A. 1995. "Secret Ballot and Its Effects in the Late Roman Republic." *Hermes* 123: 426–442.

Yakobson, A. 1999. *Elections and Electioneering in Rome: a Study in the Political System of the Late Republic*. Stuttgart.

Yakobson, A. 2014. "Marius Speaks to the People: "New Man", Roman Nobility and Roman Political Culture." *SCI* 33: 283–300.

Yunis, H. 1996. *Taming Democracy: Models of Political Rhetoric in Classical Athens*. Ithaca, NY.

Yunis, H. 2000. "Politics as Literature: Demosthenes and the Burden of the Athenian Past." *Arion* 8: 97–118.

Yunis, H. 2001. *Demosthenes, On the Crown*. Cambridge.

Yunis, H. 2005. *Demosthenes, Speeches 18 and 19*. Austin.

Zanker, G. 1981. "Enargeia in the Ancient Criticism of Poetry." *RhM* 124: 297–311.

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